Spring 1965

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Recommended Citation
John H. Stroh, Article 7: Documents of Title, 30 Mo. L. REV. (1965)
Available at: https://scholarship.law.missouri.edu/mlr/vol30/iss2/8

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ARTICLE 7: DOCUMENTS OF TITLE

John H. Stroh*

I. Introduction

Documents of title relate to goods in the possession of another, a bailee. Physically, the goods may be in motion or at rest, but the commercial importance of documents of title depends upon their use to effect the economic movement of those goods. The use of a public warehouse to store a quantity of goods too large for the storer's premises, the use of carriers to transport items from raw material source to factory, are important parts of many businesses, and indeed performance of such services makes up a great portion of carriers' and warehousemen's revenue, but have no particular commercial importance. Yet the bailee's obligation to deliver the goods he takes for storage or shipment found in such situations is one of the two foundation stones on which the structure of commercial use of documents of title is erected. It is this obligation, backed by the bailee's credit and his reputation for performance and use of due care, that gives money's worth to a piece of paper equivalent to a draft accepted by a reputable firm, for a document of title, aside from being a bailee's receipt and a contract to ship or store, represents the ownership of goods. And the fact that control or disposition of the document amounts to control or disposition of the goods, to a more-or-less extent depending upon the type of document and its disposition, is the other foundation stone of the structure.1

By sale of a warehouse receipt, hides in Iowa, sugar in Louisiana, machine parts in Ohio, or grain in Nebraska can be sold in New York without the necessity of the physical presence of either the buyer or seller at their situs and without the necessity of physical delivery. By issuance of a delivery order, a large bulk of goods may be broken down into commercially disposable units while still in storage. By selling "cash

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1. Because the documents and the goods are separate and distinct, and each is subject to separate ownership, there is always the possibility that parties dealing with one may have conflict with parties dealing with the other.

By dealing with documents to control goods, one creates the so-called "sandwich effect."

(300)
against documents" a seller can procure payment from a buyer before the latter can take control of the goods. By pledge of a warehouse receipt a borrower can raise capital on his inventory, and the bank need not take possession of 30,000 bushels of soybeans or try to fit a yard full of structural steel into its vaults. In each case the value of the piece of paper depends upon what it stands for and what can be done with it.

Article 7 of the Uniform Commercial Code deals primarily with the extent to which the documents of title represent both the goods and their ownership, and with the mechanics of their transfer. The subject of this paper is the documents themselves, their issuance and transfer, and the rights and duties of those who issue and transfer them. Other Articles of the Code, Article 2 (Sales), Article 5 (Letters of Credit), and Article 9 (Secured Transactions), tell what can be done with the documents. In other words, Article 7 states the ground rules; the other Articles describe the game.

Unlike the revolution expressed in Article 9, Article 7 contains very little of sweeping or direct change. In the areas in which they operated, the old uniform laws worked well enough, and so the changes brought about by Article 7 are mainly logical extensions of the old law, additions to fill the gaps where the law was silent or to bring the law up to date with changes in transportation and distribution caused by the passage of time and improvement of method, and variations in detail having little effect on the substantive rights of persons issuing and dealing with documents of title. In several areas, for example, the increased power of a consignor to control shipments, policy decisions were made which do involve a material change in rights. However, on the whole, most of the difficulty in the day to day operation in the area of documents of title will likely be counsel's, and it will be most likely generated by his inability to read the new law without reading the old law into it and by his definition of operative words in terms of the old law.

For example, under the Uniform Bills of Lading Act, coverage extended only to common carrier bills. Under the Code, coverage has been expanded to reach "bills of lading," howsoever denominated, issued by contract carriers and freight forwarders as well as by others. The only criteria is that the "receipt" be issued by someone engaged in the business of transport-

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2. Essentially, Article 7 is a revision of the Uniform Bills of Lading Act, c. 407, RSMo 1959 (UBLA) and the Uniform Warehouse Receipts Act, c. 406 RSMo 1959 (UWRA), and certain provisions of the Uniform Sales Act, §§ 27-40 (USA), which was never enacted in Missouri.
ing or forwarding goods for hire. Also, under the Uniform Act, the only negotiable bill of lading was an "order" bill; under the Code, a negotiable bill of lading may be issued in "bearer" form.

Yet for all of its expanded coverage of carriers' bills of lading, the Code can be applied only to intrastate shipments and those from overseas. Federal law covers bills of lading issued on interstate shipments and overseas export shipments. The issuance and nature of warehouse receipts are not so seriously affected by Federal law, but regulatory state law may exert a powerful force in guiding and controlling warehouse operations.

II. THE DOCUMENT ITSELF

"Documents of Title" are documents which purport to be issued by or addressed to a bailee and which purport to cover identified goods in the bailee's possession. This definition is important because of the words "purport" and "purported." It encompasses persons who may not be bailees in the common law sense, and gives document of title status to documents which cover non-existent goods or goods on which there has been an overissue of documents. At common law, a bailee is a person who holds possession of chattel property for another, but in Article 7 a "bailee" is any person who, by a document of title, acknowledges pos-

5. E.g., Grain Warehouses and Inspection of Grain, c. 411, RSMo 1959; Warehouses and Warehousemen, c. 415 RSMo 1959.
6. Section 400.7-103, RSMo 1963 Supp. provides that treaties and statutes of the United States are to be paramount over the Code, as are regulatory statutes of the State and tariffs, classifications and regulations filed or issued pursuant to any of them. One is given pause by § 400.10-102(1), RSMo 1963 Supp., providing that Article 7 does not repeal or modify laws prescribing the form and contents of documents of title "in respects not specifically dealt with herein." For example, there is no requirement in Article 7 that non-negotiable documents be stamped with the words "non-negotiable," yet §§ 415.090, .100, RSMo 1959 require that a non-negotiable document have those words "plainly written or stamped" on its face. Portions of c. 415, RSMo 1959, are no doubt applicable to some operations of bailees. This chapter is, in part, of a criminal nature, and dates back to 1889. The extent to which the provisions of c. 411, RSMo 1959 apply raises another question; this chapter deals with grain and, as a special statute, might take precedence over the later, but more general, Commercial Code chapter. One can only hope that those persons who were so eagerly pressing for "modernization" of our law will be equally vigorous to urge law revision to resolve these conflicts.
session of, and contracts to deliver, chattels.  Aside from warehouse receipts and bills of lading, the Code lists delivery orders, dock warrants and dock receipts as documents of title; however, provision is made for according document of title status to any new document which may evolve in the future and be considered by the trade as a document of title. Such a new document would have to meet the definition stated at the beginning of this paragraph and also be a document "which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers." Such a "new" document could be one involving the use of electrically transcribed data cards and equipment by which punched information can be carried on long distance wires, if the document meets the two tests. Apparently, these tests are also applicable to documents which are labeled bills of lading and warehouse receipts. In fact, the Code recognizes that dock warrants and dock receipts may, in certain instances, be only interim receipts, that is, receipts which only call for a carrier to issue a bill of lading subsequently, and hence in such a situation are not documents of title.

Warehouse receipts are documents of title issued by persons in the business of storing goods for hire, in other words, by warehousemen. A person other than a warehouseman may, in certain instances, issue receipts which, although not issued by a person in possession of another's property, are treated as being true warehouse receipts for all purposes. In addition, issuers of documents of title may not deny their obligations as issuers, despite the fact that they own the goods, that they are doing business in violation of regulatory statutes, or that the document does

7. § 400.7-102(1)(a), RSMo 1963 Supp.
8. § 400.1-201(15), RSMo 1963 Supp.
9. § 400.1-201(15), RSMo 1963 Supp.
10. Comment 15 to § 1-201, 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 § 1-201 (1962)].
11. §§ 400.1-201(45), 7-102(1)(b), RSMo 1963 Supp. By virtue of § 196.510, RSMo 1959, locker plant operators are deemed not to be warehousemen although they would otherwise qualify.

The definition of a warehouseman as one who "stores goods for hire" rather than one who "stores goods for profit" as previously provided in § 406.010(1)(13), RSMo 1959 (UWRA § 58), should draw co-operative and other non-profit warehouses into the purview of Article 7. It should be further noted that the requirement that the bailee be "lawfully engaged in the warehouse business" is no longer present.

not conform to the requirements of the law. And a person who issues what purports to be a warehouse receipt may not deny his obligation as a warehouseman even though he does not come within the Code definition of such. Thus, a form of "statutory estoppel" is raised against persons who would attempt to take the benefit of a bailee's position while denying the obligations of it.

Bills of lading are issued by persons who are in the business of shipping or forwarding goods. It has been in this area that the Code has made many innovations, even aside from the expanded definition of "bills of lading" and the inclusion of issuers other than common carriers. The Code provides for a "destination bill" that is, a bill of lading issued at the destination rather than at the point of origin. The utility of this in days of high speed surface and air carriage and somewhat slower mail is obvious. Goods shipped by truck or air may arrive at the destination long before a bill of lading with draft attached can move through banking channels to the buyer's city. This can be dangerous in the event of a perishable shipment; if the seller used an order bill of lading to take advantage of bank collection machinery, then the carrier could not surrender the goods to the buyer without taking it up. A C.O.D. shipment would solve this problem, but it raises others. By using a destination bill of lading, the seller may still receive payment before the buyer is allowed to examine the goods. The carrier, on the seller's request,


14. § 400.7-401, RSMo 1963 Supp. establishes the obligation of "issuers." But the spurious "issuer" cannot obtain the benefits of a true bailee with regard to a lien and so forth.

15. § 400.1-201(6), RSMo 1963 Supp. Section 407.010, RSMo 1959 (UBLA § 1), was restricted in applicability to "bills of lading issued by any common carrier"; in the case of all others the provisions of c. 415, RSMo 1959, were apparently applicable. Portions of c. 415 which date from 1889 are no doubt still applicable to, at least, some operations of warehousemen and carriers, or, as has been previously indicated, the question of its applicability may rise up to haunt the unwary, since it is, in part, of a criminal nature.

16. § 400.7-305, RSMo 1963 Supp. See comment to UCC § 7-305 (1962). This is permissive on the carrier. The problem has a non-statutory solution as well. Usually seller's bank can make some arrangement with buyer's bank by telephone.

17. The problems of C.O.D. shipment are that someone is supposed to collect the money before delivery. This is usually a truck driver, who must either take a large amount of cash or take a check, either of which has certain disadvantages. Finally, he may be persuaded to give up the goods without receiving payment.

18. By using bank collection machinery, the seller is assured that the matter of getting his money has been handled by responsible professionals through bank-
can issue a bill of lading to the order of seller’s bank in buyer’s city, or simply a bearer bill of lading to that bank, while seller wires a draft on buyer to his bank. As another innovation, a freight forwarder can issue a bill of lading which will control the passage of title to the goods involved although the forwarder’s bill is subject in certain instances to the carrier’s bill.19

III. Delivery Orders

A delivery order differs from other recognized documents of title in that it is addressed to a bailee rather than issued by him20 and, until it is accepted by the bailee, is neither a receipt nor a contract to ship or store.21 The issuer of an unaccepted delivery order is, or purports to be, the holder of a negotiable bailee-issued document, or, more commonly, the owner of goods covered by a non-negotiable one, and he thereby directs the bailee to deliver all or a portion of the goods in his possession to the transferee of the delivery order. Delivery orders may be negotiable or non-negotiable, but neither, as they are issued, convey more than a

19. The Interstate Commerce Act was amended to define a forwarder as a “common carrier,” c. 318, 56 Stat. 284 (1942), as amended. 49 U.S.C. §§ 1001-1022 (1958), and the Federal Bills of Lading Act seems to be applied to their bills of lading. In relation to a true carrier, a forwarder is classified as a “shipper.” By § 400.7-503(3), RSMo 1963 Supp., the carrier discharges its obligation to deliver when it delivers according to its bill of lading, but title to goods based on this bill of lading is subject to the rights of a holder by due negotiation of a forwarder’s bill of lading. Comment 3 to UCC § 7-503 (1962). Carrier’s bills of lading issued to the “Acme Forwarding Company” should put the transference on notice.


21. §§ 400.7-102(3), 7-502(1)(d), 2-503(4), RSMo 1963 Supp. Probably the requirement that a delivery order be “accepted” is pertinent only in the case of negotiable delivery orders, since, when they are accepted, they have a life of their own in the channels of commerce. The analogy is to a draft, and the accepted negotiable delivery order is in effect, a negotiable warehouse receipt. Delivery orders of a non-negotiable nature are “accepted” by the bailee, usually by his act of delivery, although the bailee may “acknowledge” that he holds possession for the owner of the delivery order.
defeasible title to the purchaser. If the delivery order is negotiable, the initial purchaser from its issuer may take it by due negotiation and acquire most of the rights of a holder by due negotiation—all of them but the bailee's obligation to deliver. If it is non-negotiable, the purchaser acquires all of the title that his seller could convey. The mechanics of making title to goods acquired by delivery order indefeasible are discussed subsequently. Delivery orders are used to convert non-negotiable documents into negotiable documents, to break up large shipments or stores into salable amounts, and to make deliveries. They can constitute the "written instructions" under section 400.7-403(4).

IV. Issuance of Documents

The Code does not require a bailee to issue a document of title for goods he receives. But if a warehouseman does issue a receipt, the minimum contents are prescribed by Article 7, although the form is not. There is no substantial change in contents from those required by the UWRA; there is some change in nomenclature and detail. If any of the required items are missing, on either a negotiable or non-negotiable receipt, the warehouseman is liable to any person for any loss caused by the omission. There is no similar requirement for bills of lading, it apparently being thought by the drafters that Federal and local regulatory agencies would continue to prescribe both the contents and the form of bills. The foregoing is not the only variation among bailees; for example, the treatment of unauthorized completion by the filling in of blanks differs depending upon the bailee's status as a carrier or a warehouseman. In the case of the latter, a purchaser for value without notice may treat the unauthorized completion of a negotiable warehouse receipt as being authorized, while no similar provision is made for negotiable bills of

22. See Part X infra.
23. § 400.7-501(2)(a)-(b), RSMo 1963 Supp.
24. § 400.7-502(1)(d), RSMo 1963 Supp.
25. § 400.7-504(1), RSMo 1963 Supp.
26. § 387.180, RSMo 1959 requires a common carrier to issue a bill of lading on demand. Most of the thrust of Missouri law was directed at the prohibition of the issuance of documents when no goods were received.
27. § 400.7-202, RSMo 1963 Supp.
28. Compare § 406.030, RSMo 1959. It should be noted that there liability ran only for omission from a negotiable receipt.
29. The question may arise: how many essential terms must be missing before the "receipt" is no longer a "warehouse receipt"? Presumably, the answer is: when it no longer qualifies as a document of title under the Code's definition.
30. § 400.7-208, RSMo 1963 Supp.
lading. This difference is probably based on a compromise between the policy of protecting the holder of negotiable documents and the realization that bills of lading are often made out by truck drivers at the scene of the pick-up in the heat of the moment and loading operations are often performed by the shipper's employees, while warehouse receipts are somewhat more leisurely prepared by the warehouseman's own employees who have stacked the goods. Other unauthorized alterations on both warehouse receipts and bills of lading and unauthorized completion of bills of lading, leave the document enforceable in its original tenor.\(^3\)

There is also a variance in the standards set for the bailee’s liability for non-receipt or misdescription of the goods. A party to, or a purchaser of, any document other than a bill of lading, who relies on the description of the goods stated thereon may have a recovery from the issuer for damages caused by the non-receipt or misdescription of the goods.\(^4\) This liability can be avoided by a “conspicuous” notation to the effect that the issuer is without knowledge as to the receipt of the goods or that they conform to the description if the bailee, in fact, does lack this knowledge; an example of this sort of notation would be one involving a description by marks and labels or the old hedge: “said to be or to contain.” Of course, if the party or purchaser has actual notice of the misdescription or non-receipt, he cannot assert a claim on such a basis against the bailee since he has not relied. A carrier’s liability is somewhat broader and extends to liability for misdating of bills,\(^5\) since this can make a “stale” bill into one which is apparently both viable and valuable,\(^6\) as well as to liability for non-receipt and misdescription, but the carrier does not have to conspicuously indicate his lack of knowledge in the description, as does any other bailee. The carrier’s liability runs only to the consignee of a non-negotiable bill who has given value in good faith or the holder by due negotiation of a negotiable bill. If the issuing carrier is a common carrier and loads the goods, he must determine the number of packages or the kind and quantity of the freight if in bulk, and he cannot avoid liability by using “shippers load, weight and count”; the common carrier is not, however, required to open up sealed packages and

\(^{31}\) §§ 400.7-208, 7-306, RSMo 1963 Supp.

\(^{32}\) § 400.7-203, RSMo 1963 Supp.

\(^{33}\) § 400.7-301, RSMo 1963 Supp. The misdating provision was not found in c. 407, RSMo 1959.

\(^{34}\) If a bill of lading is “stale,” generally either it is “spent” (the carrier has delivered), or something is wrong with the goods. The updated bill when attached to a draft could induce someone to buy the draft.
may describe such goods by quantity and label or “said to contain.” The bailee, whether carrier or otherwise, cannot deny liability on the ground that the document was issued by his agent or servant who acted contrary to instructions, or who issued a document when no goods were received, or who misdescribed them, so long as he had real or apparent authority to issue documents and purported to act for the bailee. And if the shipper actually loaded the goods, the carrier, by so indicating, may avoid liability for improper loading.

V. The Bailee’s Obligation to Deliver

The bailee who has issued a document of title covering goods is under obligation to deliver those goods, or their equivalent if fungibles are involved, to the “person entitled under the document” unless he is excused from so doing. There are, however, several conditions to the obligation. If the claimant to the goods refuses or fails to satisfy the bailee’s lien for charges when requested, or if he claims by virtue of a negotiable document and refuses to surrender it to the bailee, then the bailee may refuse to deliver. And in addition, if more than one person claims the goods, the bailee’s obligation to deliver is suspended until he can determine the merits of the adverse claims or initiate court action to do it for him.

The grounds on which the bailee is excused from making a delivery upon demand are itemized in section 400.7-403(1). Generally, if the bailee delivers to a person who had no right to the goods, then he is responsible in damages to the person who had, unless he can fit himself into one of

35. § 400.7-102(1)(g), RSMo 1963 Supp. There are no such provisions in either c. 406 (UWRA) or c. 407 (UBLA), RSMo 1959, but see § 407.240, RSMo 1959.
36. Thus, the carrier could obtain summary judgment in a suit joining him and the shipper.
37. See Part VIII infra.
38. If the document is negotiable, a “holder”; if it is non-negotiable, “the person to whom delivery is to be made” by its terms or by written instructions under it. See § 400.7-403(4), RSMo 1963 Supp.
39. § 400.7-403(1), RSMo 1963 Supp.
40. § 400.7-403(2), RSMo 1963 Supp. Under prior law § 406.090, 470.120, RSMo 1959, the person claiming the goods had to tender payment of storage charges as a condition precedent to his demand.
41. § 400.7-403(3), RSMo 1963 Supp.
42. § 400.7-603, RSMo 1963 Supp., this constitutes one of the “any other lawful excuses” of § 400.7-403(1)(g), RSMo 1963 Supp.
43. § 400.1-106(2), RSMo 1963 Supp. provides that, generally, any right or obligation imposed by the Code (c. 400, RSMo 1963 Supp.) can be enforced by a civil action, and § 400.1-103 RSMo 1963 Supp. provides for supplementing the Code by principles of law and equity and general rules of law.
these excuses, or unless he has delivered according to the document of title or Article 7 and can show that such delivery was made in good faith, which includes "the observance of reasonable commercial standards." The dimensions of "reasonable commercial standards" are indefinite; the bailee is, at a minimum, prevented from hiding behind the facade of "the pure hearted fool." The standard may require him to inquire into the antecedents of transactions which are outside the scope of commercial regularity. Clearly, the bailee cannot make delivery to one claimant on a document after he knows of the existence of another adverse claim without some fear that his good faith will be questioned and without anticipating that he will be a party to a conversion suit. And he cannot thereafter depend on the ground of a good faith delivery according to the document. In such a case, he must either make the determination of whose receipt of the goods is rightful as against the other claimant and prepare to defend his determination, or else he must initiate some three-party court action, either as a plaintiff in an interpleader suit, or as a defendant-third party plaintiff in a misdelivery suit, to compel the adverse claimants to try out their respective titles. Probably, however, the bailee will, in such a situation, deliver the goods to the claimant with whom he does business without requiring a bond, much to counsel's disgust.

If the bailee made delivery on a document prior to receiving notice of the adverse claim, he can defend against the claimant's suit on the ground of a good faith delivery according to the terms of the document or pursuant to Article 7, even though the person to whom he made delivery had fraudulently obtained a valid document, or had properly obtained an invalid document, or even though the initial bailment was unauthorized, provided he observed reasonable commercial standards.

The bailee may always deliver to the "true owner" of the goods if the bailment was unauthorized, whether or not a negotiable document was issued on the goods, and be free of liability if he can make his proof, even as against the claim of a holder by due negotiation. The difficulty here arises in the bailee making a prelitigation determination of

44. § 400.7-404, RSMo 1963 Supp. The Article 1 definition of "good faith" is that of "honesty in fact." § 400.1-201(19), RSMo 1963 Supp.
45. This puts the bailee into the same class as a "merchant." § 400.2-103 (1) (b), RSMo 1963 Supp.
46. § 400.7-403 (1) (a), RSMo 1963 Supp.
47. § 400.7-603, RSMo 1963 Supp.
whether or not the bailment was "unauthorized." Delivery to a "rightful claimant" does not always refer to delivery where there has been an unauthorized bailment; it refers, as well, to delivery to a person who may have acquired better rights than the claimant by virtue of Article 7 or otherwise. For example, although the possessor of a non-negotiable bailee-issued document may issue a delivery order and exhaust his title to the goods, if he issues another to a subsequent purchaser, a buyer in the ordinary course who is the first to notify the bailee, the bailee may deliver safely to the subsequent purchaser even after receiving notice of the earlier delivery order, since that claimant's title has been cut off. The good faith requirement for delivery does not apply to delivery to the "true owner" or "rightful claimant"; whether or not he knows of conflicting claims, the bailee may still deliver to the rightful claimant.

If upon demand the bailee cannot deliver the goods because they were destroyed or damaged or are missing, due to some cause for which he is not liable, he is similarly excused from delivery. It appears that the bailee has the burden of proving that his lack of the proper degree of care did not cause the loss, for he has an obligation to use "due care." Under the Code, the degree of care set for most bailees, including warehousemen, is that care which a reasonably careful man in like circumstances would exercise. Warehousemen face no liability for failure to use a higher degree of care unless they assume such duty by contract or are required to exercise such care by some local statute, such escalation of "due care" being specifically permitted by the Code. The liability of the common carrier for injury to goods, arising out of pre-Code law, is specifically retained. Other carriers are held to the same degree of care.

49. §§ 400.2-403, .7-503, .9-307, RSMo 1963 Supp. See Part X infra.
50. §§ 400.2-403(2), .7-504(2) (b), RSMo 1963 Supp. The issuer of the delivery order would have to be a "merchant." There is nothing which prevents a person taking documents rather than goods from being a buyer in the ordinary course. § 400.1-201(9), RSMo 1963 Supp.
51. There was an option granted by the drafters in UCC § 7-403(1)(b) (1962) to put the burden of establishing negligence on the claimant; this option was not accepted by the Missouri legislature.
52. In National Bank of Commerce v. Flanagan Mills & Elevator Co., 268 Mo. 547, 188 S.W. 117 (En Banc 1916), it was held that an issuer of "warehouse receipts" on its own goods was absolutely obligated to deliver, i.e. a seller.
53. § 400.7-204, RSMo 1963 Supp.
54. § 400.7-309(1), RSMo 1963 Supp. A carrier is generally liable for its own negligence and, as has been shown, has the burden of disproving its negligence. In a suit on a bill of lading, the rule in Missouri seems to be that the common carrier insures delivery unless the loss is occasioned by act of God, public enemy, inherent defect or vice of goods, or the fault of the shipper. See Emerson Elec.
as warehousemen. The Code does clear one disputed area of the law; although it has been clear for some time that a warehouseman could limit the amount of his liability on the basis of the amount of his storage rates, and this grant has been carried forward by the Code, the effect of section 407.040, forbidding the impairment of the obligation of care, upon limitation of the amount of carrier liability was much debated. Section 400.7-309(1) restates the Interstate Commerce rule that the amount of liability of bailees can be limited.

If the bailee has rightfully sold the demanded goods in exercise of his right to terminate storage or in enforcement of his lien for charges, he has an excuse for failure to deliver. In order to take advantage of this excuse, however, the bailee will have the burden of proving that the sale was rightful and that he adhered to the rules with no deviation.

By the terms of the contract of carriage, the carrier agrees to deliver the goods to the person and the location specified on the bill of lading. However, unless the bill itself provides to the contrary, the carrier may deliver to a person or location other than that specified, without liability for misdelivery, if he makes the change on the instructions of a "proper party." As might be expected, when a negotiable bill of lading has been issued, the "proper party" is the holder; the carrier, however, must note the change of instructions on the bill, otherwise anyone to whom the bill is subsequently duly negotiated may hold the carrier to its original tenor. When a non-negotiable bill is at issue, the problem is much more difficult. Possession of a non-negotiable bill is not nearly as important as ownership of the goods. Between the consignor and consignee on a straight bill, the owner of the goods should be able to control delivery, and under former law, when the carrier received conflicting instructions,

57. Comment to UCC § 7-309 (1962).
58. § 400.7-206, RSMo 1963 Supp. There are no corresponding provisions for carriers, but if a carrier is acting as a warehouseman, holding goods in a terminal, he might attempt to terminate storage on the basis of § 400.7-105, RSMo 1963 Supp., to the effect that the absence of such provision does not give rise to the implication that it is not applicable.
59. §§ 400.7-210, 7-308, RSMo 1963 Supp.
60. § 400.7-303(1), RSMo 1963 Supp.
61. §§ 400.7-303(1)(a), 7-303(2), RSMo 1963 Supp.
he was required to determine who was "lawfully entitled" to the goods at his peril or to delay delivery until the dispute was resolved. Inasmuch as this threw a substantial burden on the carrier, who would prefer not to have it, the Code resolved the problem by allowing the carrier to follow the orders of the person with whom he made the contract of carriage, the consignor, in the face of conflicting orders. In the event that the consignee has received the bill of lading or the goods have arrived, the carrier may follow the instructions of the consignee for diversion or reconsignment, if he has received no conflicting instruction. And finally, if the carrier determines to follow the directions of the consignee for business or other reasons, he may safely do so if the consignee was in fact entitled to the goods as against the consignor.

Under certain conditions at common law an unpaid seller could, as against the buyer, stop the delivery of goods being transported to him by a carrier. This right has been expanded under Article 2 from "stoppage in transitu" to "stoppage of delivery." The seller may now stop delivery by any bailee to an insolvent buyer, whether from transport or storage, and, further, the seller may stop delivery of lost shipments by a carrier if the buyer repudiates the contract or fails to perform some condition precedent. Since the right to stop delivery on the part of the seller is predicated on some action, or the status of insolvency, of the buyer, the carrier, who has a duty to follow the instructions of the seller with whom he made the contract of carriage, must rely on the seller's appreciation of the buyer's action or status being correct. If the seller had no right to stop delivery as against the buyer, both the seller and the bailee are liable to the buyer for his damages, but the seller must indemnify the bailee for losses caused in following his instructions. There is specific provision for stoppage of delivery on non-negotiable documents with a bailee indemnification provision; it cannot be assumed that a bailee on a negotiable document cannot demand indemnification when it is not surrendered. It should be noted that a consignee's rights against a carrier are defeated by a consignor's diversion or reconsignment which causes

62. § 407.130, RSMo 1959, was cast in terms of "justified delivery."
63. § 400.7-303(1)(b), RSMo 1963 Supp.
64. § 400.7-303(1)(c), RSMo 1963 Supp.
65. § 400.7-303(1)(d), RSMo 1963 Supp.
67. § 400.2-705, RSMo 1963 Supp.
68. § 400.7-504(4), RSMo 1963 Supp.
the bailee not to deliver to the consignee.\(^6\) Stoppage of delivery may be
effected by the seller on either a negotiable or non-negotiable document;
but the carrier need not obey the order until the negotiable document is
surrendered, and in any event the seller’s right terminates once the buyer
acquires the document of title by negotiation, or the buyer receives the
goods, or the bailee acknowledges to the buyer that he holds the goods
for him.

VI. **Bailee’s Charges and Lien**

The bailee who performs services is, of course, entitled to charge
for them, whether his charges are established for him or he publishes
a tariff or schedule of charges or he makes his own bargained-for contract;
and he is given a lien on goods in his possession for charges pertaining
to those goods. This is a specific lien, and all bailees are allowed to benefit
themselves of it.\(^7\) The lien is for the “usual charges” of storage or ship-
ment which are enumerated in a general way. The breadth of such charges
available to the warehouseman is greater than that allowed to the carrier,
because the former may be required as part of his usual duties to perform
more services on the goods and over a longer period of time; that is, the
difference is due to the wider scope of legitimate, ordinary operations of
the warehouseman.

It is specifically provided that the special lien on the goods, and all
other bailee’s liens on them as well, are lost when the bailee delivers the
goods from his possession.\(^8\) The lien may also be lost on goods which
the bailee unjustifiably refuses to deliver, by way of penalty. In many
instances, such as in a field warehousing situation or where the bailor
keeps most of his inventory in a commercial warehouse so that there
is a rapid turn-over, it is not feasible to ask the bailor for charges on
each item as it is delivered\(^9\) and billing is on a periodic basis. For this
reason a warehouseman is granted a general lien on goods in his possession
for unpaid “usual charges” on other goods which he has already delivered,
by a statement on the receipt that a lien is claimed for charges and
expenses in relation to other goods.\(^10\) Except for field warehousing, which

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69. § 400.7-504(3), RSMo 1963 Supp.
70. §§ 400.7-209(1), 7-307(1), RSMo 1963 Supp.
72. He might decide that he could use a different warehouseman.
73. § 400.7-209(1), RSMo 1963 Supp.
is typically handled on a non-negotiable receipt, the warehouseman must also state his rate of storage and handling charges on the receipt.\textsuperscript{74}

Since many warehousemen also perform services on the goods not related to the actual bailment for which liabilities are incurred, and may advance money on warehoused goods as a loan also, they may have a security interest for their liabilities incurred, charges for extra services\textsuperscript{75} and for money advanced. This security interest is subject to Article 9, and is not the same as a "statutory" or artisan's lien;\textsuperscript{76} therefore, the warehouseman, to insure himself of priority, must first perform a search of Article 9 filings and also make sure that his security interest attaches first.\textsuperscript{77} In addition, if he allows the bailor to remain in possession of the warehouse receipt, he must note the lien claimed on the receipt.\textsuperscript{78}

Carriers are not specifically granted general liens or liens for security interests, presumably because of the rule that common carriers do not make special arrangements with individual customers. Since Part 3 of Article 7 applies to all carriers, and a contract carrier might find himself in much the same situation as the warehouseman doing a large amount of work for one customer, there would seem to be no reason why he, for one, should not be able to assert a general lien.\textsuperscript{79}

Section 400.7-202(2)(i) requires a general statement on the receipt of the amount for which the warehouseman claims a security interest, but in the event the full amount of the advances or liabilities are not known, then a statement to the effect that they have been made or incurred and their purpose is sufficient to protect the warehouseman from liability for damages for omission. This apparently unlimited lien, however, is cut down by the section requiring specification of a maximum amount on the receipt in order for the lien to be valid, whether the receipt is negotiable or non-negotiable.\textsuperscript{80} A statement of maximum amount is not

\textsuperscript{74} § 400.7-202(2)(e), RSMo 1963 Supp.

\textsuperscript{75} § 400.7-209(2), RSMo 1963 Supp. An example of these services might be the cleaning of hides or the bagging of feed grain.

\textsuperscript{76} Comment 2 to UCC § 7-209 (1962). See § 400.9-102(2), RSMo 1963 Supp.

\textsuperscript{77} Since the warehouseman has possession, he has a perfected interest as soon as it attaches; between his interest and that of another secured party the first to perfect would be entitled to priority, § 400.9-312(5)(b), RSMo 1963 Supp. Nothing would appear to prevent him from filing a financing statement.

\textsuperscript{78} §§ 400.7-209(2), 7-202(2)(i), RSMo 1963 Supp.

\textsuperscript{79} § 400.7-105 RSMo 1963 Supp. provides against negative implication from the absence of such provisions in part 3.

\textsuperscript{80} § 400.7-209(2), RSMo 1963 Supp. Therefore the "general statement," if the amount is not known, will have to contain "not to exceed" or "not more than."
required for the validity of a general lien, but a purchaser is put on notice by the required statement that a general lien is claimed.\textsuperscript{81}

In order to protect the purchasers of negotiable documents of title and to avoid impairment of negotiability, the obviously expandable nature of the bailee's general lien has been cut down.\textsuperscript{82} A warehouseman's lien is limited, as against a holder by due negotiation, to charges in the amount, or at the rates, specified on the receipt, and if there is no such specification, then a reasonable charge for storage from the date of the receipt. Apparently this "charge for storage" includes only handling and storage charges and does not include other "usual charges" of warehousemen such as insurance for which a specific lien is available. In order to be safe on a negotiable warehouse receipt, the warehouseman must specify the maximum amount of his general lien each time he issues a new receipt. Against a "purchaser for value" of a negotiable bill of lading, the carrier's specific lien is limited to stated charges, and if none are stated, then to a reasonable charge.\textsuperscript{83}

Without the power of enforcement other than mere maintenance of possession, the lien is valueless to the bailee. He must be able to force payment of his charges by threat of a sale or else make a sale\textsuperscript{84} himself to realize the amount of his charges.\textsuperscript{85} To this end, any person claiming an interest in the goods may halt a sale and satisfy the lien by paying the charges plus the bailee's expenses in preparing for the sale, if any, and the bailee must continue to hold the goods subject to the document of title and the other provisions of Article 7. A good faith purchaser at any bailee's lien sale takes the goods free of the rights of any person against whom the lien was valid, whether or not the bailee was in strict compliance with the stated requirements of the sale; but the bailee who fails to comply with those requirements is liable for damages and if he

\textsuperscript{81} The purchaser of goods on a non-negotiable warehouse receipt will normally ascertain the amount of charges from the warehouseman before he pays the seller. Inasmuch as the seller, to make a good tender of the goods, must procure the bailee's acknowledgement, the bailee can refuse to acknowledge until his lien is satisfied. § 400.2-503(4), RSMo 1963 Supp.

\textsuperscript{82} Last sentence of § 400.7-209(1), RSMo 1963 Supp.

\textsuperscript{83} Last sentence of § 400.7-307(1), RSMo 1963 Supp.

\textsuperscript{84} §§ 400.7-210, 7-308, RSMo 1963 Supp. It should be recalled that there are statutory procedures established for the sale of grain from warehouses by c. 411, RSMo 1959.

\textsuperscript{85} The bailee, of course, still has the right to sue on his contract, §§ 400.7-210(7), 7-308(6), RSMo 1963 Supp., but recovery of such a judgment is not tantamount to recovery of funds. Also, even if the bailor has assets, the lien sale is still tremendously more rapid and efficient.
willfully violated them, he is a converter and subject to punitive damages as well.\textsuperscript{86}

There are two methods of sale, one substantially the same as that set out in the UWRA, which is keyed to proper or "legal" notice,\textsuperscript{87} and the other, a "short form," which is keyed to commercial reasonableness.\textsuperscript{88} The former, calling for an auction sale, must be used by a warehouseman when enforcing his lien on goods other than those "stored by a merchant in the course of his business," and it may be used by a warehouseman or any carrier for any sale to enforce his lien.\textsuperscript{89} All of the rules are stated; they should be closely followed. Although more formal in nature, this method has several advantages, as will be seen. The "short form" may be used by any carrier on any goods and by a warehouseman where he is permitted.\textsuperscript{90} It will probably be used exclusively by bailees with house counsel, who can keep an eye on things until more experience\textsuperscript{91} is obtained. This sale may be public or private, but the bailee may buy only at a public sale. It may be at any time or place and on any terms that are commercially reasonable, provided all persons known by the bailee to be interested in the goods are notified; notice should be accomplished by some form of mail, although no writing is specifically required. Registered or certified mail, return receipt, should ease the problems of proof of notification. A sale is commercially reasonable, whether or not a better price could have been obtained by someone else by a sale in some other manner, if the bailee sells the goods in a usual manner at a recognized market for them, or at the going price at a recognized market, or in conformity with "commercially reasonable practices" among dealers in such goods.\textsuperscript{92} Other types of sales may be "commercially reasonable" as well, but if the bailee sells more goods than was apparently necessary to be offered to satisfy the lien, his sale was not commercially reasonable unless he followed one of the three patterns of sale set out above.\textsuperscript{93}

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\textsuperscript{86} §§ 400.7-210(9), 7-308(8), RSMo 1963 Supp., are among the few exceptions to the general rule set out in § 400.1-106(1), RSMo 1963 Supp. that consequential, special, or penal damages are not a part of commercial redress.

\textsuperscript{87} § 400.7-210(2), RSMo 1963 Supp.

\textsuperscript{88} §§ 400.7-210(1), 7-308(1), RSMo 1963 Supp.

\textsuperscript{89} §§ 400.7-210(8), 7-308(7), RSMo 1963 Supp.

\textsuperscript{90} Generally, carriers do not issue bills of lading to those who are not merchants, i.e., "professionals;" small shipments are sent express or as baggage. Warehousemen, on the other hand, store goods not only for "professionals" but also for householders, persons in transit, and so on.

\textsuperscript{91} A reported case or so.

\textsuperscript{92} §§ 400.7-210(1), 7-308(1), RSMo 1963 Supp.

\textsuperscript{93} The bailee should recall that he is possibly subject to punitive damages in case of deviation.
Therefore, it is wise for counsel to build proof of “commercial reasonableness” prior to the time of sale. The bailee must hold the overage from the sale, if any, along with any unsold goods for delivery to the person to whom he would be bound to deliver the goods. It can readily be seen that the bailee (in order to decide how to enforce his lien) will have to weigh the “short form’s” advantages, speed of sale and lack of technicalities, against its disadvantages, such as having to prove commercial reasonableness, and the advantages of the “formal sale,” ease of proof of notice and the fact that the warehouseman, so long as he acts in good faith, can sell all of the goods for any price he can get.

An interesting situation may occur when the owner of the goods has not authorized the bailment but later locates the goods in the possession of a bailee. It is the general rule that the bailee may refuse to deliver the goods covered by a document of title to the claimant if he does not satisfy the bailee’s lien when requested, but it has its exceptions.94 When the goods are shipped, the lien is effective against certain persons if the carrier had no notice that the bailor lacked authority to subject the goods to such charges. It is effective against the consignor and any person entitled to the goods if they were such that the carrier was required by law to receive them for transportation, otherwise it is effective only against the consignor and those who permitted the bailor to have control or possession of the goods.95 The warehouseman is not so fortunate; his lien, whether specific, or general, or for a security interest, is effective only against a person who “entrusted” the goods to the bailor, but is ineffective against anyone against whom a document of title would confer no right under Section 400.7-503.96

VII. Termination of Storage

Although a warehouseman may terminate the bailment by selling the stored goods to satisfy his lien if his charges are due and unpaid,97 he may find it necessary or desirable to terminate the bailment relationship

94. Smith v. Kathrens Moving & Storage Co., 236 Mo. App. 921, 163 S.W.2d 128 (K.C. Ct. App. 1942), where a lien did not attach to goods taken by a sheriff on an attachment and deposited in a warehouse, when the attachment was later dismissed.
95. § 400.7-307(2), RSMo 1963 Supp.
96. § 400.7-209(3), RSMo 1963 Supp.
97. See part VI supra.
even though he is being paid regularly, or has been paid in advance. Generally a bailor warehouses his goods for an indefinite period and pays by the month but, on occasion, goods may be stored for a definite period of time. If he has been paid in advance, the warehouseman can do little to terminate storage prior to the end of the period unless the goods themselves are hazardous in nature. But prior to the end of the term, or at any time if there is no definite term, the warehouseman may, upon notification, which apparently need not be written, to the “person on whose account the goods are held” and any other person interested in them, require payment of all charges and the removal of the goods by the end of the term or on a stated date no less than thirty days away, if there was no fixed term. If the goods are not removed by the end of the term, the warehouseman may sell in accordance with regular lien enforcement procedures. It is probable that the warehouseman is required to use the “formal” method of sale established for enforcement of liens on non-merchant storage. He can also, by that method, sell all of the goods.

If the goods are deteriorating or are declining in value so that their worth will be less than the lien, if he has not been paid, a shorter form of sale may be used. The warehouseman may specify a shorter reasonable time for removal of the goods, and if they are not removed, sell them at public sale one week after a single advertisement or posting of notice.

Goods which are packaged and some bulk goods may be of such a quality or in such a condition as to render them hazardous to other property or persons or to the warehouse itself. If the warehouseman had no notice of this quality or condition at the time of deposit, then he may

98. The usual reasons are that he needs the space, that keeping the goods has become troublesome, that the goods are hazardous, or that the amount of the lien is approaching the sale value of the goods.
99. To be safe, at least 30 days prior.
100. § 400.7-206(1), RSMo 1963 Supp. The carrier is not specifically granted this power, because usually the consignee or purchaser of the goods wants them as soon as he can get his hands on them. However, if the carrier holds the goods in his terminal on an accepted delivery order he is, for all intents and purposes, a warehouseman and, by virtue of § 400.7-105, RSMo 1963 Supp., should be able to terminate the storage.
101. He has 30 days to do it in, and there is no reason for the warehouseman to open himself up to charges of “commercial unreasonableness.” Finally, the next sub-section which contemplates a more rapid sale mentions “advertising or posting” which is only used for the “formal” method to give notice.
102. § 400.7-206(2), RSMo 1963 Supp.
103. Sales under this subsection should be contrasted to those under the preceding one. The latter do not have to be predicated upon unpaid charges.
sell at public or private sale, without advertisement, upon reasonable notification to interested parties, and if he cannot dispose of the goods by sale, he may do so by any lawful means. Unlike the former law, the “hazard” is purposely left indefinite, and it should be broader in scope than its predecessor which was specific, but the warehouseman can only avail himself of these quick sale provisions when he did not actually have notice of the hazardous nature or potential of the stored goods.

In all cases of termination of storage, after the warehouseman has satisfied his lien, he must hold the overage, if any, for the person to whom he would have been bound to deliver the goods. The person “entitled to the goods” under the Article may demand the goods at any time prior to their disposition and receive them upon tender of negotiable receipt, if one is outstanding, and tender of the amount sufficient to satisfy the warehouseman’s lien, which would include expenses incurred in the sale.

VIII. Fungible Goods

The warehouseman is obligated to keep the goods covered by each receipt separate from all others so that they may be readily identified and delivered on demand, but unless the receipt provides to the contrary he is permitted to commingle fungible goods. By definition, “fungible goods” include not only items such as grain and beans where one bushel or pound of a like kind and grade are the economic equivalent of another, but may include unlike goods which, by agreement or document, are treated as being alike. Since delivery by a bailee of 1,000 bushels of

104. § 400.7-206(3), RSMo 1963 Supp.
105. § 406.340, RSMo 1959 also limited the right to terminate storage to hazardous conditions and perishable commodities.
106. The UWRA drew no distinction between hazardous conditions of which the bailee did or did not have notice when he accepted the goods. Now, if he knows of the hazard, he is expected to provide for special handling, to make special arrangements with the bailor to terminate storage, or to use the thirty day provision of subsection 1. § 411.370, RSMo 1959 provides for a different procedure for disposition of grain in bad condition. As has been previously indicated there may well be a conflict which will be resolved in its favor. This would be unfortunate because it is too cumbersome.
108. § 400.7-206(4), RSMo 1963 Supp.
109. All comments herein made are strictly confined to the application of the Code. The provisions of c. 411, RSMo 1959, may be applicable all or in part to “Grain (undefined) Warehouses.” Section 400.10-102(1), RSMo 1963 Supp. provides that such laws still stand on matters “not specifically dealt with herein.”
110. § 400.7-207(1), RSMo 1963 Supp.
111. § 400.1-201(17), RSMo 1963 Supp.
wheat is equivalent to delivery of any other 1,000 bushels of the same type and grade, there is no reason why true fungibles should not be commingled, and most grains are more economically and safely stored in large capacity receptacles.

When fungibles are commingled, the bailors, or other persons entitled to delivery, become tenants in common of the entire mass whether their documents are negotiable or non-negotiable. If, as may happen, the bailee overissues warehouse receipts and the mass is insufficient to meet his delivery obligations, then holders by due negotiation of the over-issued receipts also participate in the mass to the proportionate extent of their receipts, but the mere transferee of an overissued receipt takes nothing.

A bailee who is also in the business of buying and selling fungibles, often sells the bailed fungibles to a buyer in the ordinary course of business. If the buyer takes delivery, such a sale will cut off claims to the fungibles made by holders of duly negotiated warehouse receipts, even if they were not overissued. Apparently, this is the only way that the previously good title of the holder of a duly negotiated warehouse receipt can be cut off by someone dealing with the goods after issue of the receipt. Although there is an obvious relation to the general doctrine of penalizing entrusters, its scope clearly is restricted to fungibles, although they need not be commingled, and to the actual case of their sale and physical delivery, although the buyer's consideration may be antecedent in nature. In the case of a non-negotiable receipt or a transferred negotiable receipt, presumably the more general provisions of the "entrusting" section of Article 2 cited above would be applicable with regard to any goods, whether or not the buyer takes delivery.

The receipt holders share in the remainder of the mass as tenants in common following such sales, and if they can trace the proceeds of the sale into the bailee's assets, they may be able to place an equitable lien on it to salvage something more from the bailee's general creditors, for the situations in which a bailee overissues receipts or sells bailed goods which he cannot cover with his own are usually situations in which he is insolvent. The receipt holders cannot, however, claim title to the fungibles which were delivered and take possession of the goods from

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112. § 400.7-207(2), RSMo 1963 Supp.
113. § 400.7-205, RSMo 1963 Supp.
114. § 400.1-201(44), RSMo 1963 Supp. defines "value."
115. § 400.7-207(1), RSMo 1963 Supp.
the buyer, leaving him with a claim against the bailee. Although the penalty may appear to be severe with regard to the otherwise almost unassailable nature of a duly negotiated warehouse receipt, persons in the business of dealing in commodity paper deal on the basis of the warehouseman’s credit and with a knowledge of the history of the grain warehouse business, which has in the past been more lurid than have some others.

IX. Transfer of Ownership to the Documents and the Goods

A preferred status is given some purchasers of certain documents of title. This status depends upon the twin concepts of negotiability and due negotiation. The “holder” of a negotiable document of title is a person to whom the document has been negotiated. If he is a holder by “due negotiation,” then he acquires title to the goods and to the document, plus rights gained through estoppel and agency law. He also picks up, under his document, conforming property delivered to the bailee after issuance of the document in much the same manner as a grantee under warranty deed, and cuts off any equitable or legal rights other persons may have in the documents or the goods. Further, he acquires the bailee’s obligation to hold the goods, free from claims and defenses other than those arising from the document itself and from Article 7.

In other words, the holder by due negotiation of a document of title acquires, in many cases, a more firm hold on the goods underlying the document than he would have received had he bought the goods themselves, and he can acquire greater rights in the document and the underlying goods than his transferor may have had, provided his transferor had “some interest” in them.

The importance granted due negotiation of negotiable documents is one strand of the thread running through the entire Code that subordinates the interest of the few whose common law property rights and title to either the goods, instruments, or documents are destroyed by a good faith buyer for the benefit of the vastly greater number of persons who,

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116. § 400.1-201(20), RSMo 1963 Supp., that is to say, he is the possessor of a document with a good chain of title.
117. § 400.7-502, RSMo 1963 Supp. All of this tends to put duly negotiated commodity paper on par with “money paper.”
118. This is one aspect of the so-called “sandwich effect.” There are two levels of activity which can affect title to the document and to the goods, one level concerned with the former, the other with the latter.
acting in the regular course of business, have a vital interest in the rapid, safe consummation of usual commercial transactions involving persons in trade. In such case there should be no necessity of strict scrutiny of the antecedents of a genuine appearing document presented in the normal course of day to day business. In other words, under the Code, the law merchant has triumphed over the common law rights of the property owner which were so rigorously protected over so many centuries and so slowly eroded by the demands of commerce. However, before the decay of the rigor of the common law is mourned over much, it can be concluded that in the great majority of cases of those few whose interests are cut off, the demands of commerce triumph over the rights of a person who is, himself, in the commercial world and who can be expected to have a knowledge of those business risks found in the commercial stream. Persons not in the commercial world simply have no business dealing with negotiable documents.

A document of title is negotiable if, in domestic trade, the underlying goods are to be delivered to “bearer” or to the order of a named person. All other domestic documents of title are non-negotiable. An indorsement to the order of a named person or “bearer” on a non-negotiable document will not make it negotiable; nor will a bailee’s requirement that a consignee indorse a straight bill of lading or a named party endorse a non-negotiable receipt make either document negotiable.

To become a holder of a negotiable document one must be the recipient of that document by negotiation. Delivery is always required to accomplish negotiation; in certain cases, the document must also be indorsed. It must be indorsed if an “order” document; if it is a “bearer” document, it may be negotiated by delivery alone, no indorsement being required. If either an “order” or a “bearer” document is specially indorsed to a named person, that person must, to negotiate it in turn, indorse as well as deliver it. However, order documents indorsed in blank or to

120. In overseas trade a document made out to a named person or his assigns may be negotiable, § 400.7-104(1)(b), RSMo 1963 Supp.
121. § 400.7-104(1)(a), RSMo 1963 Supp. Thus, a bearer bill of lading is possible.
122. §§ 400.7-104(2), 7-501(5), RSMo 1963 Supp. There is no requirement that a non-negotiable document of title contain the conspicuous “non-negotiable” legend. Accordingly, since this matter is not “specifically dealt with,” §§ 415.090, .100, RSMo 1959, which establish this requirement, may be applicable.
123. The mechanics are set out in § 400.7-501(1), (2) and (3), RSMo 1963 Supp.
"bearer," are negotiable by delivery alone. If a document running to the order of a named person is delivered to him, it is, in effect, negotiated to him. The purchaser from a bailor who received a warehouse receipt to his order and the buyer who takes an order bill of lading in his own name thereby can become a holder by due negotiation, as can the "issuee" of an "order" delivery order.

If the purchaser of a negotiable document is satisfied that the document is genuine and that the necessary indorsements are all present, and he takes it in good faith, without notice of claims or defenses and for value, he may claim the status of a holder by due negotiation. The last portion of section 400.7-501(4) appears to, but does not, cut down the meaning of "value" by requiring that the document be not taken as payment for or satisfaction of a money obligation. Good faith is generally defined in the Code as "honesty in fact," but to this section 400.7-501(4) adds a requirement of honesty in law as well, inasmuch as the purchaser must take the document without notice of defenses and claims. The crux of due negotiation is found in the concept of "regular course of business and financing," that is to say, commercial regularity. If a person attacking the status of a person claiming to be a holder by due negotiation can establish that the negotiation of the document was not in the regular course of business and financing, or that the holder took the document in satisfaction of, or as payment for, a money obligation, he can defeat the claimant's right to the special status and relegate him to that of a "transferee." Transactions in the "regular course of business or financing" are those transactions with documents between

124. In other words, regardless of the original "order" or "bearer" nature of the document, the last indorsement controls the next negotiation, § 400.7-501(3), RSMo 1963 Supp.
125. § 400.7-501(2)(b), RSMo 1963 Supp.
126. Of course, the person in the same situation who takes "bearer paper" can also become a holder by due negotiation.
127. § 400.7-501(4), RSMo 1963 Supp.
128. The definition of "value" supplied in § 400.1-201(44), RSMo 1963 Supp. for general use includes "antecedent obligations."
129. § 400.1-201(19), RSMo 1963 Supp.
130. These provisions really seem to bear most importantly on presumptions of due negotiation which may arise on the claimant's proof that the document is genuine and that he took by negotiation, Comment 4 to UCC § 7-501 (1962), and the burden of persuasion allocated to the claimant and the person attacking his status. If the analogy to negotiable instruments is valid, the presumption of due negotiation would fall when the attacker put on evidence of a claim or defense, and the person claiming the status would have to make proof on the other elements. If the attacker attempted to show the transaction to be out of the "regular course" it would appear that he would have the burden of persuasion.
persons who usually and normally deal with such documents, or members of the trade, and those transactions which are concerned with the disposition of goods at the going market. The prohibition against the document being taken to settle a money obligation spells out one of the aspects of the regular course requirement; although couched in terms usually associated with "value," it is directed at a creditor taking a document from an insolvent, or one who is about to become an insolvent, in cancellation of a debt. A question of fact is presented regarding the intent of the purchaser of a document if antecedent consideration is involved: did he take it as additional security, or as payment? If he took it as payment, he is only a transferee. In any event, the payment of money debts by commodity paper is not a transaction which the Code aims to protect; it is commercially irregular. The extent to which the good faith or honesty in law and fact requirements are included in "regular course" is unknown, although it should be clearly included by a generalized obligation that parties in commerce observe reasonable commercial standards.

There are two other classes of purchasers of documents who have a recognized status under Article 7. These are the transferee of a non-negotiable document and the transferee of a negotiable document, that is, a transferee to whom the document either has not been negotiated or has not been "duly" negotiated. The latter may well be a "holder" if the document were negotiated to him. Both transferees acquire only that title and those rights which their transferor had actual authority to convey, but they do not obtain the benefit of the laws of agency or estoppel. Of the two, the transferee of the negotiable document has a truly anomalous position. He may have less right to the goods than he would have had he bought them outright in the ordinary course of business. Yet, in certain cases he may be a holder or may have the potentiality of becoming a holder, for if an indorsement is missing or is otherwise improper, he can compel his transferor to supply it. If the

131. The classic discussion is found in Comment 1 to UCC § 7-501 (1962).
132. Persons dealing with negotiable commodity paper in a sales transaction are generally "merchants."
133. § 400.7-504, RSMo 1963 Supp.
134. If he is a "holder," he is a "person entitled under the document" for the purposes of § 400.7-403 (1), RSMo 1963 Supp.
135. § 400.7-506, RSMo 1963 Supp. This is a specifically enforceable right. His transferor should not object, since he, by indorsement, does not guarantee that previous indorsers or the bailee will not default, § 400.7-505, RSMo 1963 Supp. He does warrant on negotiation or transfer that the document is genuine, that he has no knowledge of facts that would impair the document's validity or worth, and that the negotiation or transfer is rightful and effective both to the document
transferee is a holder, the bailee, so long as the initial bailor had title to the goods or authority to convey it, cannot safely surrender the goods to anyone but him and must deliver them to him, nor can the goods themselves be attached.  Even further, the transferee who so becomes a holder may become a holder by due negotiation at the time that the defect in his title is corrected.  Upon procurement of the proper indorsement, the transferee should at that time become a holder by due negotiation if there are no other defects in his claim, although in the case of all other defects to his claim, his status as a holder by due negotiation would be determined at the time that he first took the document.  The transferee of a negotiable document which was not negotiated to him has fewer rights than the transferee of a non-negotiable document except that his transferor and his transferor's creditors cannot reach or deal with the goods, even though he does not give the bailee notice of his acquisition of the negotiable document.

The transferee of a non-negotiable document is treated by Article 7 more as though he were dealing with tangible personal property, the goods themselves, rather than the document of title.  The non-negotiable document is not nearly so representative of the possessor's ownership of the goods as is the negotiable. There would seem to be two types of transferees of a non-negotiable document.  Many cases of transfer of non-negotiable documents seem to fit themselves into Article 2, the Sales Article; that is, the transferee is usually a purchaser of goods who takes delivery by document or who pays against documents, for example, the buyer of goods who takes a delivery order and procures delivery or the consignee on a straight bill of lading.  These persons in truth are purchasers of the goods and not purchasers of the document.  They should be able to avail themselves of the special protection provisions of subsections 400.2-403(1) and (2). This transferee, if he is a good faith purchaser for value, should cut off certain equities or possibilities of regaining title on the part of third persons and there is nothing which

and the goods, § 400.7-507, RSMo 1963 Supp.  The collecting intermediary makes a very limited warranty, § 400.7-508, RSMo 1963 Supp.

135. § 400.7-602, RSMo 1963 Supp.

136. § 400.7-506, RSMo 1963 Supp.

137. For example, the bailee does not have to take it up on delivery of the goods, although most warehousemen require wisely, the surrender of the document.

138. § 400.2-403(1), RSMo 1963 Supp.  A good faith purchaser for value seems to be any person who, with honesty in fact, takes an interest in the property or documents in anything but a donative transaction.  A person with a voidable title, and this is any person, has the power to transfer good title to him.
would appear to prevent him from becoming a “buyer in the ordinary course of business” in order to take title away from an “entruster” if he bought the goods from a merchant. This potential should be denied the transferee of a negotiable document, even if he is a holder, or the transferee of a non-negotiable document who, in fact, is dealing with the document itself as a commercial item, for both are dealing with the document rather than the goods and must find their rights under subsections 400.7-504(1) and (2). Any transferee of a non-negotiable document is granted certain benefits with regard to the goods, that is, he is granted a somewhat similar protection to that available in the Sales Article discussed above, in that he can take title away from a prior transferee of a non-negotiable document by being the first to notify the bailee of his rights, if a buyer in the ordinary course. This continues the analogy to personal property, in that the transferee of a non-negotiable document, by notifying the bailee of the transfer, “takes possession of the goods” and his rights in the goods may not then be defeated by creditors of the transferor who could regard the lack of notification to the bailee as “a fraudulent retention of possession by the seller-transferor” or by a subsequent buyer from the transferor who happens to be a buyer in the ordinary course of business.

X. Conflicting Rights to Underlying Goods

A thief cannot cut off his victim’s title to personal property by storing it or shipping it, and procuring a document of title which he subsequently negotiates. He does not have any interest at all in the goods which can be transferred, but if the true owner of the goods acquiesced in the procurement of the document, it becomes effective if duly negotiated. In line, however, with the underlying principles of the Code, protecting the mercantile expectations of a buyer in the ordinary course

140. § 400.2-403(2), (3) and (4), RSMo 1963 Supp. Subsection 4 apparently refers to purchasers other than buyers in the ordinary course of business. Comment 4 to UCC § 2-403 (1962). The definition of a buyer in the ordinary course is a good deal more restricted than that of a good faith purchaser for value. § 400.1-201(9), RSMo 1963 Supp. For one thing, it does not include secured parties. It could be argued that since the transferee only takes the title that his transferor had or had authority (not power) to convey, he cannot benefit himself of the “estoppel” provisions of Article 2. It would seem that this is unduly restrictive.


142. “Acquiescence” is undefined, but apparently means knowing that a document has been procured and doing nothing to stop its negotiation. The question is: just what constitutes “doing nothing?”
of business and the holder by due negotiation, and throwing the risk
upon the person who lets goods out into the commercial stream, the
holder by due negotiation may cut off the title of an owner who puts
the goods, or a document of title for them, in the hands of a person to
whom he has given actual or apparent authority to deal with them or
it in some way, or who is a merchant, or who has actual or apparent
authority to obtain the delivery of the goods from a bailee. Due nego-
tiation of a document of title on those goods will expand the minimal
interest of the bailor into title in the hands of the holder or cut off the
right of a "defrauded seller" to revest himself with title.

Protection is afforded the true owner of the goods to some extent
by the requirement that the purchaser take by due negotiation before
he can benefit himself of section 400.7-503(1) on entrusting, or make use
of the laws of agency or estoppel. Otherwise, he is merely a transferee
who can take only the right and title of his transferor or that right or
title which he had actual authority to transfer, and the unauthorized
bailor's interest will not be expanded into title. The requirement that
the document be taken in a commercially regular manner would tend
to preclude its purchase without inquiry from strangers to the trade or
persons known to be truck drivers or stock clerks.

The risk that the bailment will be found to be unauthorized with
regard to the transferee of a non-negotiable document, and his expec-
tations defeated, may be narrowed if the transferee is in fact a purchaser
of the goods and is able to avail himself of the protection offered by
section 400.2-403 to buyers in the ordinary course, even though Article
7 standing alone limits the transferee to those rights or that title which
his transferor had or had actual authority to convey. In a similar situ-

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143. This is "entrusting." § 400.7-503, RSMo 1963 Supp, imparts attributes of
negotiability to commodity paper. Compare § 400.2-403, RSMo 1963 Supp, which
is of a more limited nature in that the owner of the goods must "entrust" them to
a "merchant." Compare National Match Co. v. Empire Storage & Ice Co.,
19 S.W.2d 565 (K.C. Mo. App. 1929); National Match Co. v. Empire Storage &
144. § 400.7-502, RSMo 1963 Supp.
145. See discussion supra.
146. Section 400.2-403(2), RSMo 1963 Supp, can hardly be confined to the
instance of a person leaving a watch at a jeweler's to be repaired and the subse-
quent sale of the watch to a third party. From the definition of buyer in the
ordinary course of business, § 400.1-201(9), RSMo 1963 Supp. it is clear that he
can take delivery of goods by acceptance of a non-negotiable document of title, and
it is further clear from § 400.2-104(1), RSMo 1963 Supp. that a "merchant" is
not necessarily a retailer.
ation, a secured party under Article 9 with a nonpossessory security interest in inventory can have his collateral sold out from under him by a merchant-borrower to a buyer in the ordinary course of business even though the security interest is covered by a filing, and similarly the merchant could warehouse the goods and transfer them free and clear of the security interest by sale and transfer of the warehouse receipt to a buyer in the ordinary course of business.\textsuperscript{147} Of course, this is precisely what the secured party intends when he allows his borrower to have possession of the collateral, so he should have no legitimate complaint. It should be further noted, however, that the right of the secured party would not be cut off if the merchant warehoused the entrusted goods and pledged the non-negotiable warehouse receipts, since a taker for security is not a buyer in the ordinary course.\textsuperscript{148}

Due to the representative nature of documents of title, a potential conflict of claims to goods arises when more than one document is outstanding on the same goods.\textsuperscript{149} If the bailee-issued document is procured by a stranger to the title of the goods who cannot be fitted into the provisions of section 400.7-503, as an “entruster,” or by one who is not a “merchant” under section 400.2-403(2), no document issued to him can be effective, nor for a like reason can any delivery order be effective when issued by a stranger to the title of the goods even though he may once have had title to the goods or the document, provided that the true owner does not “acquiesce” in the issuance. This is a similar case to that found when documents are over-issued, but there is no over-issue when a bailee-issued document and an unaccepted delivery order are both outstanding on the same goods since there are two different issuers.\textsuperscript{150}

When the holder or transferee of a bailee-issued document issues a delivery order for the goods covered, he divests himself of title to those

\textsuperscript{147} § 400.9-307(1), RSMo 1963 Supp.
\textsuperscript{148} § 400.1-201(9), RSMo 1963 Supp.
\textsuperscript{149} When there is an “overissue,” there are more than one set of documents from the same issuer outstanding on the same goods. § 400.7-402, RSMo 1963 Supp. Generally, the overissued document, except in the cases of bills in a set, substitutes for lost documents, and overissues on fungibles, does not give or control title to the goods, but merely gives rise to an action for damages against the issuer. The effects of the various doctrines of estoppel and agency, where applicable, may vary the “title follows the original” doctrine.
\textsuperscript{150} When a bailee accepts a delivery order, he becomes an “issuer” with regard to it, § 400.7-102(1)(g), RSMo 1963 Supp. If the underlying document and the accepted delivery order are both negotiable and the bailee has not noted his acceptance on the underlying document, serious problems can develop. For this reason, negotiable delivery orders are not used freely with negotiable documents.
goods and becomes a stranger to their title to the extent of the delivery order. Although the purchaser of goods by a delivery order acquires title to them, he must do something more than merely pay for and receive delivery of the document. If the bailee-issued document is negotiable, he must procure the bailee's acceptance of the delivery order, whether it be negotiable or non-negotiable; his seller, the issuer of the delivery order, might duly negotiate the bailee-issued document and cut off the rights of any purchaser on an unaccepted delivery order.151 By procuring acceptance by the bailee, the purchaser acquires substantially unassailable rights to the goods and the bailee's obligation to hold the goods for him. An accepted delivery order, in essence, becomes a warehouse receipt and the accepting bailee becomes an "issuer."152 Inasmuch as the bailee could not safely accept any delivery order with a negotiable document outstanding without noting the fact of acceptance on the document, the holder of the delivery order, to crystallize his rights, must get the negotiable document out of the hands of his seller and into the hands of the bailee, the very act which will prevent him from negotiating the document while the delivery order is unaccepted.153 Even though acceptance of a negotiable delivery order by the bailee is vital to its value as a commercial document (for many persons would hesitate to purchase such a defeasible title to goods), it would seem that "acceptance" by the bailee is also required in the case of a non-negotiable delivery order. Inasmuch as the non-negotiable delivery order is not a true commercial instrument because of the disabilities attendant to all non-negotiable documents,154 it would appear that "acceptance" of the non-negotiable delivery order would consist of an actual delivery of the goods, an acknowledgement that the bailee holds title for the purchaser or a re-issue of a new warehouse receipt to the purchaser. In any event, however, the

151. § 400.7-503(2), RSMo 1963 Supp. And until the delivery order is accepted, the transferor may sell the goods to a buyer in the ordinary course of business who has the power to cut off title in the holder of the delivery order by notifying the bailee. This is clearly an "estoppel" situation, created by leaving the underlying document outstanding, but it is not the bailee's fault. The last sentence of § 400.7-503(2), RSMo 1963 Supp. makes § 400.7-504(2), RSMo 1963 Supp. applicable.

152. The accepted negotiable delivery order now can have a commercial life of its own.

153. This is one of those things more easily said than done. By giving the document to the purchaser of the delivery order, the holder of the document has probably become an "entruster" under § 400.7-503(1)(a), RSMo 1963 Supp. even though the purchaser is not a "bailor" in a common law sense.

154. "Documents of title, unless negotiable in form, are not proper subjects for commercial dealing." 2 WILLISTON, SALES 556 (1948).
purchaser by delivery order, to protect himself, must get the bailee-issued document out of the hands of the seller before it can be negotiated or he can find a buyer in the ordinary course. 155

If the bailee-issued document is non-negotiable, its presence or absence, or the lack of notation on it, is not of signal importance. Possession of a non-negotiable document without deliveries or prior delivery orders noted on it, should not mislead a potential buyer, nor does it constitute a case of "entrusting," or grounds for "estoppel." 156 In the event that a delivery order is issued on a non-negotiable document, the rights of the purchaser of the delivery order depend upon his notification to the bailee of his rights acquired through purchase. Until the purchaser of goods covered by a non-negotiable bailee-issued document notifies the bailee, his rights to the goods are subject to defeat by his transferor's subsequent sale of the goods to a buyer in the ordinary course who either takes actual delivery before the first purchaser notifies the bailee or who is the first to notify the bailee. 157 Even though the delivery order was negotiable and must be accepted before conferring any rights against the bailee, notification of the purchaser's interest under a negotiable delivery order should fix the purchaser's rights to the goods and fix his rights against the transferor and anyone subsequently deriving their rights from him.

If the transferee or holder of a bailee-issued document of title issues more than one delivery order covering the same goods, there has been an over-issue of documents, and the second delivery order standing alone conveys no right or title to the goods. The same principles as those discussed above are still applicable. The purchaser of a delivery order based on a bailee-issued negotiable document must procure the bailee's acceptance before his rights are protected against subsequent negotiation of the bailee-issued document and he can fix his rights against any other subsequent purchaser by subsequently issued delivery order only in the same way. The purchaser by delivery order must make sure that his document is accepted forthwith. By leaving the unmarked bailee-issued

155. A person in the business of dealing in commodity paper may or may not be "a person in the business of selling goods of that kind." See § 400.1-201(9), RSMo 1963 Supp.
156. In any event, except in certain limited cases, takers of non-negotiable documents are denied the benefits of these doctrines. Compare §§ 400.7-502(1), 7-504(1), RSMo 1963 Supp. Generally the bailee is not required to take up a non-negotiable document. See §§ 400.7-403(3), 7-601, RSMo 1963 Supp. But he is still responsible for damages caused by an overissue of documents. The scope of his risk is not too large.
157. § 400.7-504(2)(b), RSMo 1963 Supp.
negotiable document in the hands of his seller, the purchaser gives him the power to cut off the purchaser's title to the goods by a sale to a buyer in the ordinary course of business who may purchase by a delivery order, since possession of an unnoted negotiable document is extremely misleading. Mere notice of the rights of that second buyer given to the bailee will cut off all of the title of the taker of the first unaccepted delivery order. Where the bailee-issued document is non-negotiable, notice of the purchaser's interest given to the bailee is sufficient to fix his rights against the transferor and if he wins the notice race, he prevails over subsequent buyers from his transferor regardless of the nature of the delivery order. The danger to the purchaser under a non-negotiable bailee-issued document is that his title can be cut off by another sale or his seller will take delivery from the bailee by his failure to "take possession" of them by notification.

XI. Conclusion

The foregoing constitute the ground rules for documents of title. Their use is governed by the other articles of the Code. The following might be of interest to the reader who desires a more complete treatment of the area. Probably the best analysis of documents of title and their uses is found in Braucher, Documents of Title (1958). Another valuable work on the actual use of documents of title is Hawkland, A Transactional Guide to the Uniform Commercial Code (1964), particularly Volume 1, pages 309-380; and see Hart and Willier, Forms and Procedures under the Uniform Commercial Code (1964), pages 7-1 through 7-228.

158. In such circumstances, the purchaser and any transferees still have title to the goods now in the bailor's hands; they have just lost their rights against the bailee, § 400.7-504(2)(c), RSMo 1963 Supp. They are no longer "persons entitled under the document" when they do not notify the bailee of their rights.