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Stanley V. Kinyon

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The Uniform Commercial Code in Minnesota: Introduction and Provisions of Articles 1 and 10.

Minnesota recently adopted the Uniform Commercial Code. This is the first of several articles to be published introducing Minnesota practitioners to the operations of the UCC. Professor Kinyon discusses the background and nature as well as the general and implemental provisions of the Code.

Stanley V. Kinyon*

On May 26, 1965, Minnesota adopted the Uniform Commercial Code when the Governor signed the act¹ that had passed both houses of the Legislature on May 20, 1965, two days before the end of the 1965 legislative session. The effective date is July 1, 1966.²

This article is written primarily for Minnesota lawyers and judges not familiar with the Uniform Commercial Code (hereinafter referred to as the UCC or the Code) and presents a summary explanation of its background, scope and structure, the few Minnesota variations from the uniform text, the implementive provisions in article 10, and the important general provisions in article 1.

A. ORIGIN AND BACKGROUND OF THE CODE

The Code is a product of the joint efforts of the National Conference of Commissioners on Uniform State Laws and the Ameri-

*Professor of Law, University of Minnesota.

1. The bills (H.F. 162; S.F. 86) embodying the Code became chapter 811, Minn. Laws 1965. Complementary enactments, amending various unrepealed sections of the Minnesota Statutes to conform and harmonize them with the Code, were also adopted and became chapters 812 and 813, Minn. Laws 1965. The text of all three chapters, with an index and disposition table, is available for reference in a special pamphlet distributed to the subscribers to Minnesota Statutes Annotated as a temporary supplement. References in this article to sections of chapter 811, Minn. Laws 1965, are derived from that special pamphlet and will be cited as MINN. STAT. ANN. § 336.0-000 (Temp. pamph. 1965).

2. MINN. STAT. ANN. § 336.10-105 (Temp. pamph. 1965).

can Law Institute.³ The original version was drafted during the 1940's and the first official text was promulgated in 1951. It was adopted without change by one state, Pennsylvania, in 1953. However, after intensive study and criticism by the New York Law Revision Commission the original text was substantially revised by the sponsoring organizations during 1956-58. Two more states, Massachusetts and Kentucky, adopted a 1957 revised official text. Some further revisions resulted in a 1958 version of the official text with comments. Pennsylvania reenacted that text and eleven other states adopted it during 1959-61,⁴ but with non-uniform variations in some states. A further revision of the official text, embodying some of these variations, was made in 1962 in an attempt to preserve substantial uniformity. This 1962 version has been adopted in an additional 28 states, the District of Columbia and the Virgin Islands, and is the text adopted in Minnesota. However, many of these states, including Minnesota, have made some nonuniform changes in the text, and not all of the states that adopted earlier texts have adopted the 1962 revisions.⁵

Although the Code sponsors have thus revised their official text several times in an effort to satisfy valid objections to its original provisions and eliminate nonuniform variations in the adopting states, the fact remains that most of the states adopting the Code have some variations from the 1962 version thereof. In the main these variations are minor and seriously affect only about thirty of the Code's 400-odd sections, but a few states have made more extensive changes. Thus, the highly desirable objective of complete nationwide uniformity in statutory commercial law has not been fully realized. Perhaps the permanent editorial board for the UCC, established by its sponsors to try to keep the Code up-to-date and uniform both in text and interpretation, can eventually eliminate the significant variations. Notwithstanding this difficulty the Code does achieve immense

3. Many articles and commentaries dealing with the nature and development of the Code have appeared in legal periodicals during the past eighteen years. A selection of the most useful of these general discussions is presented in the bibliography following this article.

4. A table showing the jurisdictions that have adopted the Code, the date of adoption and the effective date in each jurisdiction is kept current in the cumulative annual pocket part supplement to volume 1 of *Uniform Laws Annotated, Uniform Commercial Code*.

5. The variations from the official text which each adopting state has introduced are shown in *Uniform Laws Annotated, Uniform Commercial Code*.

improvement in our commercial law and a vastly greater interstate uniformity than has heretofore existed in this field.

B. OFFICIAL COMMENTS

The 1952, 1958 and 1962 versions of the official text have included comprehensive official comments on each of the text sections, prepared by the Code draftsmen and explaining the scope, background and purpose of each section. These official comments are *not* incorporated in the legislative enactments of the text but are essential to a full understanding of it.⁶

In Minnesota a Special Uniform Commercial Code Committee of the Minnesota State Bar Association made arrangements in 1960-61 for a comprehensive study of the effect of each section of the UCC on existing Minnesota law. This study resulted in a book containing the 1962 official text with a comment on each section explaining in detail its relation to and impact upon corresponding Minnesota law.⁷ These comments provide a bridge between prior Minnesota law and the UCC and should furnish the profession with an adequate background and orientation for detailed study of specific sections.

In subsequent discussion of specific Code sections reference

6. See AMERICAN LAW INSTITUTE & NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, 1962 OFFICIAL TEXT WITH COMMENTS (1963) [hereinafter cited in footnotes and referred to in text as CODE or UCC]. It may be purchased directly from the official printer, West Publishing Co., St. Paul, Minnesota 55102. It also contains a summary of the Code's history and development and the names of the many experts who participated in its preparation and revisions. When Minnesota Statutes Annotated is revised in 1966, it will also contain the official comments.

7. Through the committee's efforts substantial monetary contributions to help defray the cost of the study were obtained from the Minnesota State Bar Association, various banker's organizations and a number of interested Minnesota business concerns. The study was made at the University of Minnesota Law School during the years 1961-64 and the University absorbed about fifty per cent of the cost in the form of time and service of staff members. The study is entitled A STUDY OF THE EFFECT OF THE UNIFORM COMMERCIAL CODE ON MINNESOTA LAW (1964) [hereinafter cited in footnotes as MINN. STUDY; hereinafter referred to in text as *Minnesota Study*]. This book was printed and distributed in June 1964 by the West Publishing Company, which distributed it without charge as a public service. This book is now out of print but is available in the University of Minnesota Law School Library and in most of the state, county and law firm libraries. The *Minnesota Study* comments are being revised and updated and will be incorporated, along with the official UCC comments, in the revised portion of Minnesota Statutes Annotated containing the Code.

will be made to these *Minnesota Study* comments for detailed analyses and citations and no attempt will be made here to duplicate them.

C. NATURE OF THE CODE: A RECODIFICATION

The UCC is not an entirely new body of law such as the original Workman's Compensation Act or the Social Security Act. For years we have had extensive statutory codes governing various aspects of the transactions, instruments, documents and procedures involved in the commercial distribution of goods: uniform laws governing sales, negotiable instruments, warehouse receipts, bills of lading and trust receipts, plus a number of non-uniform statutes such as those governing conditional sales, chattel mortgages, and the like. The UCC is *primarily a revision of existing law* — a modernized, consolidated and integrated recodification of present uniform and nonuniform statutes; plus some new Statutes of Frauds and statutes of limitations; plus a number of provisions codifying limited but related portions of the law of contracts, remedies, procedure, conversion, negligence, personal property, agency, conflicts, waiver and estoppel not previously embodied in statutory form.

The Code repeals and replaces our present commercial statutes and is new only in the sense that it brings them together in one integrated package with such changes and additions in substance and terminology as are necessary to reconcile, harmonize and bring them up to date. Among the statutes that will be repealed when the Code takes effect are the Uniform Sales Act,⁸ Uniform Negotiable Instruments Law,⁹ Uniform Bills of Lading Act,¹⁰ Uniform Warehouse Receipts Act,¹¹ Uniform Stock Transfer Act,¹² and Uniform Trust Receipts Act¹³ plus a number of non-uniform statutes governing bank collections, bulk sales, chattel mortgages, conditional sales, etc.¹⁴ Interestingly, the Minnesota

8. MINN. STAT. §§ 512.01--79 (1961).

9. MINN. STAT. §§ 335.01--80 (1961).

10. MINN. STAT. §§ 228.01--55 (1961) except for penal sections.

11. MINN. STAT. §§ 227.01--59 (1961) except for penal sections.

12. MINN. STAT. §§ 302.01--22 (1961).

13. MINN. STAT. §§ 522.01--18 (1961).

14. MINN. STAT. ANN. § 336.10-102(1) (Temp. pamph. 1965) (lists all sections of the *Minnesota Statutes* (1961) wholly repealed).

In addition to the statute repealed, companion bills (see note 1 *supra*) make further statutory changes. Chapter 812 prescribes conforming amendments to the following statutes: MINN. STAT. §§ 168.71 (retail installment contracts), 222.17 (equipment trusts of railway rolling stock), 222.18, sub-

UCC will *remove* from our statute books a greater number of specific sections than are added by the code.¹⁵ The Code does *not* deal with or prescribe rules governing the administration or regulation of banks, trust companies, carriers, warehousemen or dealers in investment securities.

D. UCC STRUCTURE AND NUMBERING

The structure and numbering of the Code is simple and understandable. There are ten major divisions, called "articles." The first nine articles contain the substantive provisions while article 10 contains the implementive provisions, *i.e.*, effective date, repealer etc. Seven of the ten articles contain subdivisions, called "parts." The basic units within the articles and parts are "sections," numbered in a somewhat unique system of hyphenated numbers and frequently divided and subdivided into parenthetically numbered subsections, parenthetically lettered subsubsections, etc.

Each section number begins with the number of the article in which it is located. This number is followed by a hyphen and three digits. The first of these three digits is the number of the part in which the section is located within the article and the last two digits indicate the number of the section in the part. For example, section 3-406 is in article 3, part 4, and is the sixth section in that part. In the three articles which have no part division the first of the final three digits of all sections is 1. This numbering system permits citation to any provision of the Code by section number alone without citation to article or part since those are designated in the section number.

Although our Minnesota official statutory numbering system is a decimal system, the Revisor of Statutes, in drafting the Code bill, devised a method by which the official UCC structure

division 1, (recording certain mortgages of railroad, telegraph and telephone company property), 227.52 & .54 (penal provisions applicable to warehousemen), 228.47 (penal provisions as to duplicate bills of lading), 231.09 (warehousemen's obligation to issue uniform receipt), 234.02 & .27 (grain storage receipts), 236.06 (grain bank's possessory lien), 300.25 & .26 (transfer of stock), 335.033 (certificates of indebtedness issued by state), 514.19, .24, .27, .28, .36, .63 & .66 (various lien provisions), 541.01, .05, .07 & .18 (certain statutes of limitations), 550.13 (levy on bulky articles), 600.15 (signatures on written instruments) (1961). Chapter 813 enacts two new sections: MINN. STAT. §§ 300.111 & .112 (1965) (governing the filing of financing statements by certain public utilities).

15. 495 sections of Minnesota Statutes (1961) were expressly repealed by the Code as compared with the 406 sections added by it.

and numbering could be preserved in our system and thus facilitate transference of references from the official text into the Minnesota UCC. The UCC is coded in Chapter 336 in the Minnesota Statutes, with the Code section numbers placed to the right of the decimal point. Section 3-101 of the Code becomes section 336.3-101 of the Minnesota Statutes. [*Ed. note:* citation in text and footnotes will be to the section number of the 1962 version of the Code whenever possible.]

1. *Content and Size of the Code Articles*

Articles 1 and 10 apply to the Code as a whole whereas the other articles deal primarily with a specific area or subject of commercial law. Table 1 presents a brief overview of the Code's content and subject matter organization.

Table 1

- Article 1. **GENERAL PROVISIONS.** 17 sections, divided into 2 parts, contain rules, principles, and definitions generally applicable throughout the Code. Substantial flexibility and variation of UCC rules by agreement is permitted and many terms are defined.
- Article 2. **SALES.** 104 sections, divided into 7 parts, recodify, expand, and update the present Uniform Sales Act which will be replaced and repealed. This article also contains a number of new rules of contract law.
- Article 3. **COMMERCIAL PAPER.** 79 sections, divided into 8 parts, recodify, consolidate, and update the Uniform Negotiable Instruments Law but apply it only to checks, drafts, notes, and certificates of deposit in this article. (Similar rules applicable to bonds, stocks, etc., are in article 8.) The Uniform Negotiable Instruments Law will also be replaced and repealed.
- Article 4. **BANK DEPOSITS AND COLLECTIONS.** 37 sections, divided into 5 parts, recodify the present statutes governing collections, stop-orders, deferred posting, and notice of errors, and add codification of present case law and deposit-contract rules governing collections, payment, remittance, documentary drafts, and bank-customer relations. Minn. Stat. §§ 48.29, .515, .518 & 335.75 (1961) will be replaced and repealed.
- Article 5. **LETTERS OF CREDIT.** 17 sections codify present case law on this subject of which there is very little in Minnesota. No present statutes are involved.
- Article 6. **BULK TRANSFERS.** 11 sections (10 in Minnesota since section 6-106 is omitted) expand and completely revise Minn. Stat. § 513.18 (1961) (sale of stock of merchandise). This will be repealed.
- Article 7. **WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.** 40 sections, divided into 6 parts, combine, recodify, and update the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act which will be replaced and repealed.
- Article 8. **INVESTMENT SECURITIES.** 41 sections, divided into 4 parts, consolidate and revise provisions of the Uniform Stock Transfer Act, the Uniform Negotiable Instruments Act, both of which will be replaced and repealed, and some sections of the Uniform Fiduciaries Act and other statutes dealing with stocks, bonds, and other investment paper.

Article 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER. 53 sections (55 in Minnesota since sections 336.9-408 & .9-508 are added), divided into 5 parts, consolidate, completely revise, unify, and simplify the present heterogeneous and conflicting statutory and case law governing the various types of commercial security transactions such as chattel mortgages, pledges, conditional sales, sales and assignments of accounts, etc. This will eliminate the present and unnecessary distinctions between different types of security agreements and will replace and repeal many of the present statutes governing them.

Article 10. APPROPRIATION, EFFECTIVE DATE AND REPEALER. 5 sections in Minnesota specify the present statutes which will be specifically repealed and provide for: an appropriation to the Secretary of State for such filing as he must do under the Code; a general repealer of inconsistent laws; the transitional effect on transactions consummated before enactment; and the effective date of July 1, 1966.

2. *Minnesota Variations*

The Minnesota legislature made very few changes from the 1962 official text in adopting the Minnesota UCC. The official text contains certain optional sections and alternative provisions, on matters not essential to uniformity, from which adopting states can elect the alternatives they prefer. In all but one or two instances Minnesota selected one of the official options. Minnesota added two nonuniform sections in article 9 which make some further provisions with respect to recording, and made a few changes in other sections in that article. Table 2 lists all of the sections in which the Minnesota version contains an optional selection or differs from the UCC.

Table 2

[*Note:* Everywhere the Minnesota Code uses "this chapter" instead of "this act."]

ARTICLE	SECTION NO.	LAW 1965, CHAPTER 811 (Minnesota UCC)
1	1-101	Adds explanation for numbering system.
	1-102(6)	New; prohibiting branch banks, etc.
3	3-121	Alternative B used (A would reverse Minnesota law).
4	4-106	Bracketed words omitted.
	4-212	Bracketed subsection (2) (concerning direct return) included.
5	5-112(1)	Bracketed options (conditional payment, letters of credit) included.
	5-114(4), (5)	
6	6-104(1) (c)	"[T]he office of secretary of state" supplied for filing of schedule in bulk transfers.

	6-106, 6-107(2), 6-108(3), & 6-109(2)	Omit optional additional require- ments concerning proceeds of bulk transfers.
7	7-204	Omits as unnecessary option (4) con- cerning retention of possibly strict- er existing law.
	7-403	Omits option in (1) (b) concerning burden of establishing negligence.
9	9-103	Includes options in (2) and (5) — for- eign airplanes and accounts.
	9-105(2)	Adds reference to "motor vehicle" definition.
	9-203 (2)	Inserts applicable Minnesota statutes superseding certain security inter- est provisions.
	9-302(3) (b)	Uses alternative A, exempting from filing certain security interests.
	9-401(1)	Uses 2d alternative, adding to (a) noninventory motor vehicles, and inserting register of deeds' and sec- retary of state's offices as places of filing.
	9-401(3)	Uses the original (not the alterna- tive) of subsection (3) but alters the wording.
	9-401(5)	New; definition of "motor vehicle."
	9-402(1)	Adds to required description of real estate "and the name of the record owner thereof."
	9-402(3)	Above phrase also added to parts 2 and 3 of prescribed form of financ- ing statement.
	9-403 to 9-407	Dollar amounts of fees inserted.
	9-403(4)	Adds indexing requirement to filing officer's duties.
	9-403(5)	Changed; provides that secretary of state shall prescribe uniform forms.
	9-403(6)	New; provides UCC fees supersede except concerning motor vehicles.
	9-407 (optional sec.)	Included; (requiring filing officers to furnish certificates).
	9-408	New; destruction of old records.
	9-508	New; recording proceedings of sale or collateral.
10		Article 10 is rearranged, as compared with the official text, but contains essentially the provisions recom- mended for article 10 plus an ap- propriation section.

E. IMPLEMENTIVE PROVISIONS IN ARTICLE 10 OF MINNESOTA UCC

The five sections in article 10 contain various provisions necessary to implement the first nine articles of the Minnesota UCC and effectuate the transition from existing law to the Code. Section 336.10-101 allocates to the Secretary of State the money necessary to organize and operate the filing activities in his office required by article 9.

Section 336.10-102 "Laws Repealed; Provision for Transition" contains two subsections. The first cites the 495 sections of Minnesota Statutes (1961) that are specifically repealed. Subsection (2) contains the following transitional provision:

"(2) Transactions validly entered into before the effective date specified in section 336.10-105 and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law repealed by this chapter as though such repeal had not occurred."

This provision gives continuing effect to the repealed statutes after the effective date of the Code with respect to those transactions validly entered into before the effective date of July 1, 1966, but not fully carried out by that time. Presumably (in view of the word "may") it does not require the parties to continue under such laws if they both desire to proceed under the UCC provisions. Thus, for example, commercial establishments that change their forms and operations when the Code takes effect would not appear to be required to use old forms or follow old procedures in completing preeffective date transactions if the other parties to such transactions do not insist upon it or would not be prejudiced by the change.

Section 336.10-103 is a simple general repealer of inconsistent laws or parts of laws. Section 336.10-104 is a saving provision expressly providing that certain existing statutes are not repealed.

F. ARTICLE 1 — SCOPE AND IMPORTANCE

1. *Minnesota Changes and Additions in Article 1*

Article 1 of the Minnesota UCC contains nonuniform additions to the text of two sections of the UCC. Section 336.1-101 adds a second sentence subjecting the arrangement and numbering of the chapter to the powers of the Revisor of Statutes and author-

izing its compilation as numbered.¹⁶ Section 336.1-102 adds a nonuniform final subsection which reads: "(6) Nothing in this chapter shall be construed to authorize the establishment of branch offices for banks, savings banks, trust companies, savings and loan associations, or building and loan associations." This addition was made out of an abundance of caution to forestall any argument that the Code repeals or qualifies the Minnesota law which prohibits branch banking.¹⁷ Neither addition appears to affect substantive uniformity.

2. Provisions in Part 1

Rules of Construction. Sections 1-102, 1-103, 1-104, 1-106, 1-108, and 1-109 prescribe general rules and principles of construction to be followed in applying all Code provisions. Except for section 1-109 making section captions part of the Code, and the freedom of contract provisions in section 1-102, these sections merely make explicit certain rules of construction that would probably be applied even if not specifically stated. However, by stating them the Code removes any doubt or uncertainty as to their applicability. They should be consulted whenever the construction of a Code provision is involved.

Section 1-102 contains some provisions that merit special attention. The first four subsections read as follows:

- (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) Underlying purposes and policies of this chapter are
 - (a) to simplify, clarify, and modernize the law governing commercial transactions;
 - (b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;
 - (c) to make uniform the law among the various jurisdictions.
- (3) The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.
- (4) The presence in certain provisions of this chapter of the words

16. MINN. STAT. ANN. § 336.1-101 (Temp. Supp. 1965)

This chapter shall be known and may be cited as Uniform Commercial Code. It is arranged and numbered, subject, however, to the provisions of Minnesota Statutes 1961, Section 648.34, so that the enacted chapter may be compiled in the next published edition of Minnesota Statutes without change and in conformity with the official numbering of the Uniform Commercial Code.

17. MINN. STAT. § 48.34 (1961).

“unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

Clause (b) of subsection (2) makes it clear that the Code should be construed dynamically and flexibly in its application to the ever-changing, ever-developing practices of commerce rather than as a static body of rigid, unchanging rules. This policy of flexibility is further implemented by subsections (3) and (4) which broadly permit the effect of Code provisions to be varied by agreement of the parties except as otherwise provided. However, subsection (3) contains an important general limitation upon this “freedom of contract” of parties to prescribe their commercial relations by agreement. Exculpatory contractual provisions purporting to relieve a party of responsibility for certain occurrences cannot operate to relieve him from responsibility for bad faith conduct or by negligent failure to observe obligations of diligence, reasonableness and care. This may change some case law in this state.¹⁸

Conflict of Laws. The UCC does not contain a comprehensive codification of the rules of conflict of laws as they apply to commercial transactions. Thus, the general case law of conflicts is supplementary to the Code under section 1-103. However, there are several sections prescribing specific conflicts provisions.¹⁹ Where applicable these supersede inconsistent case law and cannot be avoided by contrary agreement.

The conflicts provision in article 1 is contained in the first subsection of 1-105. That subsection states two rules which are applicable to all interstate and international commercial transactions covered by the Code but not dealt with specifically in the sections enumerated in subsection (2). First, parties to such transactions are given a choice of law — *i.e.*, the power, by their agreement, to determine the jurisdiction (of those jurisdictions to which their “transaction bears a reasonable relation”) whose law shall govern their rights and duties under the transaction. Second, in the absence of such agreement, the Minnesota UCC applies whenever the transaction bears “an appropriate relation to this state.” These rules obviously change some of the existing conflicts law. The official comments and the *Minnesota Study* comments contain fairly detailed discussions of the rules and their impact. A number of helpful law review commentaries deal with these conflicts problems in depth.²⁰

18. See MINN. STUDY § 1-102(3); see also MINN. STUDY § 4-103(1) (dealing with the variation of bank responsibility by agreement).

19. See §§ 1-105, 2-402, 4-102, 6-102, 8-106, 9-102 & 9-103.

20. See the “Bibliography” at the end of the MINN. STUDY § 1-105 for selected citations to several helpful law review discussions.

Waiver or Renunciation After Breach. Section 1-107 provides: "Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party." This rule apparently applies to claims or rights based upon alleged breach of any obligation under the Code. Because the provision effectuates certain waivers or renunciations without consideration it obviously adds a new and important rule to existing contract law governing the release or discharge of rights and claims. This section merely validates a gratuitous waiver or renunciation when written, signed and delivered. It does not eliminate or curtail the application to commercial transactions of established principles of waiver and estoppel by which a party in appropriate circumstances may be precluded from asserting a claim or right because of his prior conduct or oral statements.²¹

3. Provisions in Part 2

It should be noted, in connection with section 1-107 just discussed, that section 1-207 *does* preclude the application of waiver or estoppel in one type of situation. That section reads as follows:

Section 1-207. Performance or Acceptance Under Reservation of Rights.

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

This rule does not require the other party to receive performance under reservation; it merely protects the party who explicitly reserves his rights against a claim of waiver or estoppel when the other party requires or permits him to proceed under such reservation. The policy here is to avoid unnecessary stoppages or stalemates in commercial transactions during the time a dispute is being resolved, when continuation of performance is possible and desired by both parties.

Definitions. One of the most important sections in the whole Code is section 1-201. This contains definitions or descriptions of terms used throughout the Code. Many of these are presently used in statutory and case law and have a fairly clear meaning which is adopted in this section, sometimes with a bit of sharpening, clarification or slight modification. Some of the defined terms, however, are given a somewhat different meaning in the Code

²¹. See § 1-103.

than they have in other contexts²² and others are newly devised terms employed to avoid the ambiguities of older terminology.²³ A failure to study and become familiar with the definitions in section 1-201 may result in serious misinterpretation of some Code provisions.

Two other sections are essentially definitional. Section 1-204 defines the term "reasonable time" and the new term "seasonably" and permits the fixing by agreement of reasonable times. Section 1-205 defines "course of dealing" and "usage of trade." It also states rules governing the effect of a course of dealing or usage of trade, when established, on the interpretation of commercial agreements.²⁴

In addition, there are additional and sometimes extensive definitions of particular terms applicable to the subjects dealt with in articles 2 through 9.²⁵ The official comments on each section of the Code contain definitional cross references citing other sections in which key terms are defined so that readers may easily find the meaning of Code terminology.

Every effort has been made in the Code to define all important terms and to use them precisely and in their defined sense. The resulting increase in clarity and precision in our statutory law and the elimination of ambiguity and confusion resulting from this extensive definitional effort may be one of the Code's most important contributions.

Rules of Evidence and Procedure. Several sections of the Code prescribe special rules of evidence or procedure applicable to actions involving the commercial agreements, instruments and documents governed by the UCC. Where applicable these rules qualify and supersede the regular rules of evidence and procedure. The justification for these special rules is that they are necessary to implement fully the business and commercial policies and objective of the Code.

22. See, e.g., § 1-201(1) "Action," (3) "Agreement," (11) "Contract," (19) "Good Faith," (21) "Honor," (23) "Insolvent," (25) "Notice," (31) "Presumption," (32) "Purchase," (38) "Send," (44) "Value."

23. E.g., § 1-201(8) "Burden of establishing" (used in place of the traditional but often unclear "Burden of proof"), (10) "Conspicuous," (37) "Security interest."

24. The official comments and MINN. STUDY comments on §§ 1-204 and 1-205 should be consulted. The reasons for the adoption of the term "usage of trade" rather than the somewhat ambiguous term "custom" should be particularly noted.

25. E.g., §§ 2-103 through 2-106 define many terms used in stating the law of sales; § 3-102 defines some terms and lists other sections defining other terms used in stating the law of commercial (negotiable) paper.

Section 1-202 provides:

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

This will expedite legal actions between parties to a commercial contract involving third party documents when the validity of such documents is not in dispute. Section 1-208 is primarily concerned with the exercise of "at will" options. However, it also has a purely procedural provision which places "the burden of establishing lack of good faith . . . on the party against whom the power has been exercised."

Obligation of Good Faith. Section 1-203 provides that: "Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement." This makes explicit a qualification that some courts have found to be implicit in commercial contracts.²⁶ The effect is to refute any claim that rights or duties under a commercial contract are absolute or enforceable without regard to motive or purpose. This section applies to the "performance or enforcement" of *duties* and *obligations* under the Code and should not be confused with the subjective "good faith"²⁷ required of a "bona fide purchaser,"²⁸ "holder in due course,"²⁹ "good faith purchaser,"³⁰ etc.³¹

Another specific application of the obligation of good faith is to be found in section 1-208:

Option to Accelerate at Will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

This specification in the first sentence seems to be an implicit

26. See the official comment and MINN. STUDY comment to § 1-203.

27. "Good faith" is defined in § 1-201(19) as meaning "honesty in fact in the conduct or transaction concerned."

28. See § 8-302.

29. See § 3-302.

30. See § 2-403.

31. The distinction between good faith performance and good faith purchase is discussed at length in Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. CHI. L. REV. 666 (1963).

corollary of section 1-203. The reason for including this section is that article 3 broadly sanctions "at will" acceleration provisions in negotiable paper.³²

Statute of Frauds. Section 1-206 is a catchall Statute of Frauds applicable only to sales of high value, intangible personal property not covered elsewhere.³³ Its limited scope becomes clear only when one understands how the draftsmen have broken up and redistributed the Statute of Frauds in section 4 of the Uniform Sales Act.³⁴ Those provisions apply to a "contract to sell or a sale of any goods or choses in action . . ." (emphasis added) and thus cover both tangible and intangible personal property.

Section 2-201 contains a revision of the Uniform Sales Act Statute of Frauds but it is applicable only to contracts for the sale of goods. Choses in action represented by investment securities are dealt with in article 8, and section 8-319 contains a slightly different Statute of Frauds covering contracts for the sale of securities. Section 9-203(1)(b) is a still different Statute of Frauds provision applicable to security agreements and to some but not all contracts for the sale of accounts receivable and general intangibles.

The Statutes of Frauds in articles 2, 8 and 9 do not cover contracts for the sale of a few types of choses in action (*e.g.*, royalties, patent rights, etc.) that were within the Sales Act Statute of Frauds. The Code provides for these leftovers in the catchall provisions of section 1-206.³⁵

The Code thus replaces one Sales Act section with four sections which differ from the Sales Act and from each other in their requirements. This departure from the general UCC policy of consolidation and simplification is justifiable because transactions in personal property differ substantially in their purposes and in the manner in which they are made.

32. See § 3-109(1)(c).

33.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 336.2-201) nor of securities (section 336.8-319) nor to security agreements (section 336.9-203).

34. MINN. STAT. § 512.04 (1961).

35. The scope of these provisions is discussed in the official comment and the MINN. STUDY comment to § 1-206.

4. *Summary of Article 1*

The foregoing discussion of article 1 is not an exhaustive or definitive explanation of the meaning and impact of its many provisions. It does point out and underscore the importance of its provisions throughout the remainder of the Code as well as emphasize the usefulness of the official comments and the *Minnesota Study*.

BIBLIOGRAPHY

A wealth of material has been written about the UCC during the past 18 years. The bulk of the presently useful writings deal with particular Code articles or sections, and the majority of these deal with article 9. There are, however, a number of good, comprehensive discussions of the UCC as a whole and the broad general provisions in article 1. A selection of these is given below.

BOOKS

ABA UNIFORM COMMERCIAL CODE HANDBOOK (1964). This is obtainable from the American Bar Association at 1155 East 60th Street, Chicago, Illinois. The book contains full reprints of twenty-three first rate recent articles by experts on the Code published originally in various legal periodicals. It is extremely useful to anyone who does not have ready access to many law reviews and legal periodicals.

HAWKLAND & KLAUS, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE (1964). This two-volume work is obtainable through the American Law Institute office, 133 South 36th Street, Philadelphia, Pennsylvania. It is a comprehensive, integrated study text designed for the practicing lawyer which illustrates the application of the Code provisions to a variety of typical commercial transactions. It has been used as the text for many institutes on the Code and is particularly helpful in obtaining a practical working knowledge of its provisions.

RECENT ARTICLES

Bunn, *Freedom of Contract Under the Uniform Commercial Code*, 2 BOSTON COLLEGE INDUS. & COMM. L. REV. 59 (1960).

Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. CHI. L. REV. 666 (1963) (Analysis of "objective" and "subjective" good faith).

Foster, *The Proposed Uniform Commercial Code: A New Bottle for Old and New Wines*, 15 S.C.L.Q. 623 (1963).

- Malcolm, *The Uniform Commercial Code*, 39 ORE. L. REV. 318 (1960) (General objectives, history and content of the Code).
Shattuck, *The Uniform Commercial Code — A Modernization of Commercial Law*, 35 WASH. L. REV. 398 (1960).

EARLY ARTICLES

- A *Symposium of the Proposed Uniform Commercial Code*, 17 ALBANY L. REV. 1 (1953) (Article by article comparison with prior law — extensive but readable).
Beutel, *The Proposed Uniform [?] Commercial Code Should Not Be Adopted*, 61 YALE L.J. 334 (1952) (An early attack on the Code).
Franklin, *On the Legal Method of the Uniform Commercial Code*, 16 LAW & CONTEMP. PROB. 330 (1951) (Scholarly study — excellent for the complex overtones of the Code).
Gilmore, *The Uniform Commercial Code: A Reply to Professor Beutel*, 61 YALE L.J. 364 (1952).
Llewellyn, *Why a Commercial Code?*, 22 TENN. L. REV. 779 (1953).
Report of the Committee on the Proposed Commercial Code, 5 BUS. LAW. 142 (1949).
Schnader, *The New Commercial Code: Modernizing Our Uniform Commercial Acts*, 36 A.B.A.J. 179 (1950) (Content and innovations of the original version of the Code).

