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Kentucky's Commercial Code-- Some Initial Problems in Security

By FREDERICK W. WHITESIDE* and THOMAS P. LEWIS**

FOREWORD

Kentucky's first litigation requiring interpretation of the Uniform Commercial Code has been promptly brought to final decision by the Court of Appeals in *Lincoln Bank & Trust Co. v. Queenan*.¹ It is not surprising, perhaps, that at issue was the effect on the Code of other statutes, both "veteran" provisions not expressly repealed by the Code, and new provisions enacted after the adoption of the Code but before it went into effect. It was primarily this latter aspect of the case—the existence at this early date of new legislation which conflicts with the new Code—which prompted the writing of this article. It was decided, however, to include a discussion of old as well as new legislation which creates conflict or ambiguity when read with Code provisions. Only part of this conflicting legislation was dealt with by the court in *Lincoln Bank*. In its competition with the Code, this part emerged second-best. Nothing less than defeat is to be expected of old conflicting legislation, for when the Code was enacted it won out by that fact over the older legislation. All that remains in this area is the process of discovering and reconciling remnant ambiguities. New legislation which conflicts with the Code because it has not been carefully designed to "mesh" with Code provisions presents harder problems. Here total victory for the Code and a decent respect for the legislature are not always compatible. The Code emerged from the *Lincoln Bank* litigation in a position of dominance over the new legislation involved, and it was a deserved dominance. But care exercised in the legislative process is the surest guarantee for the future that the Code will not be

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¹ 344 S.W.2d 383 (Ky. 1961).

seriously weakened. The chances for its success as a Code will be enhanced if responsible persons understand the policies and purposes of the Code which make the dominance of its provisions a prerequisite to its effectiveness.

INTRODUCTORY

Most Kentucky lawyers are already fully aware of the chief underlying policies of the Uniform Commercial Code, as declared in the Code itself:

- (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 laws among the various jurisdictions.²

To accomplish these objectives the Code treats commercial transactions as "a single subject of the law, notwithstanding its many facets."³ This approach recognizes the fact that a single transaction may very well involve a contract to sell, followed by a sale, the giving of a check or draft for part of the purchase price, and the acceptance of a note with some form of security for the balance of the price. The check will be cashed or negotiated and may pass through one or more banks for collection. If the goods are shipped or stored there may also be a bill of lading, a warehouse receipt, or both. And where goods are bought from a distance the entire transaction may be made pursuant to a letter of credit.⁴ The Code supplants a wide variety of legislation previously enacted piecemeal on separate subjects, such as the laws affecting sales, negotiable instruments, warehouse receipts,

² Uniform Commercial Code § 1-102(2). The Uniform Commercial Code [herein abbreviated UCC], adopted by the 1958 General Assembly, has been codified by the Statute Revision Commission, as Chapter 355 of the Kentucky Revised Statutes [hereinafter abbreviated KRS], and the ten articles of the Code have been assigned section numbers 355.1-101 through 355.10-102 inclusive. Citations in this article will be made to the UCC section only, omitting the KRS prefix.

³ The comments of the National Conference of Commissioners on Uniform State Laws and the American Law Institute, as set out in Ky. Leg. Research Comm'n, Pub. No. 49, *Preface to Uniform Commercial Code—Analysis of Effects on Existing Kentucky Law at xxiii* (1957) [hereinafter cited LRC, Pub. No. 49].

⁴ See Young, *Scope, Purposes and Functions of the Uniform Commercial Code*, 48 Ky. L.J. 191 (1960).

bills of lading, and the various statutes on chattel mortgages, conditional sales, trust receipts and other forms of security. It seeks to codify and make available in one integrated work the entire body of law involving problems which may arise in the handling of a commercial transaction, from start to finish.

With such extensive coverage, pervading so many branches of the law, the job of reconciling the Code provisions with other chapters of the Kentucky statutes is understandably a formidable and exacting one.⁵ The Code does contain a listing of some statutes expressly repealed and of some other statutes not intended to be repealed.⁶ Further, there is the principle that prior statutory provisions are repealed by implication to the extent of their inconsistency with the Code.⁷ The legislative history of the Code's adoption in Kentucky shows clear recognition that it was impractical to attempt to list all statutes which might present problems of partial or complete repeal and that some reconciliation and some ferreting out of inconsistent statutes would therefore remain to be accomplished with the passage of time.⁸ These problems have been aptly described as "knotty half-way related

⁵ National Conference of Commissioners on Uniform State Laws and Proceedings of the Annual Conference 125, 127 (1952), containing remarks of William A. Schnader, Chairman, Uniform Commercial Code Committee of the National Conference of Commissioners.

⁶ Ky. Acts 1958, ch. 77, §§ 10-102 to -104. Only those portions of the session laws of permanent value are codified, under Kentucky compilation procedure. Therefore Ky. Acts 1958, ch. 77, § 10-104 appears as KRS 355.10-102. The specific chapters and sections repealed by Ky. Acts 1958, ch. 77, §§ 10-102, 10-103 are indicated in KRS as having been repealed, but these specific repealers do not appear in KRS ch. 355 (the UCC chapter). Thus, in this instance, the section numbers of the official draft of the UCC and the Ky. Acts do not conform to those of KRS.

⁷ Crawford, *Statutory Construction* § 307, at 628 (1940). Section 10-103 of the Official Draft contains a general repealer governing all inconsistent legislation. The Kentucky version lists only the following sections: KRS 382.680, 382.690, 382.700, 382.710, 382.720. Although Kentucky thus saw fit to enact the Code without the so-called general repealer provision contained in the recommended draft and enacted in other jurisdictions, this omission has no real significance. The Leg. Research Comm'n, in studying the official draft for adaptation to enactment in Kentucky, pointed out that this provision was not needed in Kentucky because it adds nothing to general principles of statutory construction. LRC, Pub. No. 49, p. 396 (1957).

⁸ The Legislature Research Commission with respect to statutory provisions other than those recommended for repeal in UCC § 10-102, listed a number of other statutes which it described as follows:

The statutes in this part of the Appendix are *representative* of those which are affected in varying degree by the adoption of the Uniform Commercial Code. The common feature of these statutes is that they regulate a phase that is also touched by the Code. Some of these statutes should be repealed, some amended and others left unchanged. (Emphasis added.) LRC, Pub. No. 49, app. II, p. 399 (1957).

points" between Code provisions and other statutes treating the same subject matter.⁹ Their solution requires the courts judicially to construe the related statutes and the Code together wherever possible in order to achieve the objectives of the legislation.

Among those "knotty half-way related points" none seems more baffling than the relation of the personal property security provisions in Article 9 to the provisions in the chapter of the general statutes relating to conveyances and encumbrances.¹⁰ Most of the pre-existing provisions affecting chattel mortgages were expressly repealed.¹¹ On the other hand there were a few provisions in this chapter dealing with real property mortgages, but broad enough to affect personal property as well, which were not repealed.¹² Further, and unfortunately, even after adoption of the Uniform Commercial Code, a number of provisions have been added to the chapter on conveyances and encumbrances purporting to amend the filing provisions of Article 9 of the Code.¹³ These, to be discussed within, are the real troublemakers.

Article 9, which regulates all types of chattel security, fits into the Code's comprehensive treatment of commercial transactions. To use the language of the statute itself, section 9-102 states that it applies "to any transaction (regardless of its form) which is intended to create a security interest in personal property."¹⁴ It is intended to supply a comprehensive, integrated statute where none existed before.¹⁵ The prior law of chattel mortgages, conditional sales, trust receipts and other security mechanisms has developed separately as the need arose. Its growth has been through piecemeal adaptation of these traditional devices to make them workable in a modern industrialized society.¹⁶ Article 9 of the Code seeks an essential unity of chattel security devices

⁹ Remarks of Dee Ashley Akers, then Kentucky's statute reviser at 10th Session, Annual Conference of the Commissioners on Uniform State Laws. Annual Conference of Commissioners on Uniform State Laws 116 (1958).

¹⁰ KRS ch. 382.

¹¹ KRS 382.600-30, 382.640-70, and 382.680-730 (dealing with chattel mortgages), 382.390-420 (dealing with railroad equipment and rolling stock).

¹² E.g., KRS 382.110 (providing for the recording of deeds, mortgages and other instruments), 382.290 (same), 382.020 (deeds of release), 382.270 and 382.330 to be discussed *infra* at pages 66-69.

¹³ KRS 382.675 and KRS 186.195, to be discussed *infra* at pages 69-76.

¹⁴ UCC § 9-102(a).

¹⁵ Spivack, Secured Transactions 1 (1960); Kripke, *Kentucky Modernizes the Law of Chattel Security*, 48 Ky. L.J. 369, 374 (1960).

¹⁶ Gilmore, *Chattel Security: II*, 57 Yale L.J. 761, 775 (1948).

without regard to mechanism, to supplant the confusion from rules which have grown largely by historical accident.¹⁷

Unquestionably the most important innovation of Article 9 is the concept of "notice filing,"¹⁸ which must be understood in order to grasp the real accomplishment of Article 9, and to solve problems which may arise in the construction of the filing provisions of Article 9 in relation to other provisions in the statutes.

The first point of departure from previous filing practices relates to *what is filed* under this notice filing concept. The *financing statement* is what is filed. This financing statement is a very simple form of notice, requiring only the limited information set out by section 9-402—the names, addresses and signatures of both the debtor and the secured party, and statement of the fact that there has been or may be lending upon security of the described type of collateral. It is to be distinguished from the *security agreement* which is simply the agreement which creates or provides for the security interest. The security agreement, in more familiar language, might be the chattel mortgage or the conditional sale contract. True, there is nothing to prevent the security agreement itself from being filed if it contains the information required in a financing statement and is signed by both parties, but under the Code it would be filed not as such but rather as the financing statement.¹⁹ The filing of the financial statement serves the function of *perfecting* the security interest against certain third parties (whenever such further act of perfection, beyond the creation of the security interest, is necessary against such third parties).²⁰ The written security agreement, on the other hand, serves the function of *creating* the security interest between the secured party and his debtor, with the qualifications that, in addition to the written agreement, the debtor must have or acquire rights in the collateral and value must have been

¹⁷ Malcolm, *The Uniform Commercial Code as Enacted in Massachusetts*, 13 Bus. Law. 491 (1958). In order to achieve this essential unity of security devices, Article 9 has introduced some new terminology. For example, we find "security interest" and "secured party" instead of the familiar language of "chattel mortgage" and "mortgagee", "conditional sale" and "conditional vendor"; the term "debtor" instead of "mortgagor" or "conditional vendee." See UCC § 9-105 for definitions and index of definitions.

¹⁸ There is a discussion of the meaning of the innovation of notice filing in UCC § 9-401, comment 2.

¹⁹ UCC § 9-402, comment 1.

²⁰ UCC §§ 9-302, 9-303.

advanced to him by the secured party before the security interest becomes effective.²¹ The distinction in function between the security agreement and financing statement is thus apparent.

The notice embraced in the Code concept of a financing statement may be filed either before or after the creation of the security interest. It is a statement designed simply to apprise would-be lenders of the fact that the secured party is or may be lending the debtor money upon the security of the described collateral. The Code's flexibility, not found in the traditional security devices,²² consists in the fact that security may be provided for future as well as present loans to the debtor and may cover after-acquired as well as presently existing property of the debtor, thus providing effective security for present and future advances by a floating lien upon a shifting stock of inventory as collateral. Furthermore, a security interest may even be extended to the *proceeds* received upon disposal of the original collateral,²³ provided that for continued perfection the financing statement must specifically include the proceeds arising from the original collateral.²⁴ As one authority has expressed it, the financing statement places creditors upon notice that the debtor has given, or in the future may give a security interest in specific assets, leaving the details to further inquiry.²⁵

THE LINCOLN BANK CASE

All points at issue in the *Lincoln Bank*²⁶ case required an interpretation of the relation of the filing requirements under Article 9 to statutory provisions outside the Code. The first two points involved long-standing sections of the general statutes relating to conveyances and incumbrances, providing (1) that no deed, deed of trust or mortgage of real or personal property is valid against certain purchasers and creditors unless "acknowl-

²¹ UCC § 9-204.

²² See generally Gilmore & Axelrod, *Chattel Security*, 57 Yale L.J. 517-48, (1948); Gilmore, *Chattel Security: II*, 57 Yale L.J. 761-87 (1948).

²³ UCC § 9-203(1)(b) facilitates creation of a security interest in proceeds by providing: "In describing collateral the word proceeds is sufficient to cover proceeds of any character." Further, an existing security interest would continue in any identifiable proceeds upon any unauthorized disposition of collateral by the debtor. UCC 9-306(2).

²⁴ UCC § 9-306(3).

²⁵ Coogan, *Article 9 of the Uniform Commercial Code: Priorities Among Secured Creditors and the "Floating Lien,"* 72 Harv. L. Rev. 838, 849 (1959).

²⁶ 344 S.W.2d 383 (Ky. 1961).

edged and proved according to law,"²⁷ and (2) that no deed, deed of trust or mortgage may be recorded unless it states the date and the maturity of the obligations secured.²⁸ The County Clerk for Jefferson County had refused to permit the filing of a simple short-form financing statement meeting the requirements of the Code, because of failure to meet the above two requirements of acknowledgment and statement of a maturity date. In the suit brought by the secured party to test the validity of the clerk's determination, the circuit court held that neither of the two pre-existing statutes could have any application to a financing statement under the Code. The Court of Appeals agreed. It was, as the circuit court expressed it, a case of "repeal by necessary implication" of the earlier statutes insofar as personal property security might be involved.²⁹

Since the Code is intended to be a comprehensive treatment of the entire field of security transactions in personal property, the court's decision that these statutory formalities are inapplicable to financing statements under the Code seems clearly correct. The statutory language relied upon to require the acknowledgment is as follows:

No deed or deed of trust or mortgage conveying a legal or equitable title to real or personal property shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law and lodged for record.³⁰

Since this statute relates to conveyances and security instruments affecting real property, as well as personal property, it is understandable why the General Assembly in adopting the Uniform Commercial Code left this section unrepealed. The chapter of the Kentucky Revised Statutes containing this section is mentioned in the Appendix to the Legislative Research Commission study of the Code, among the statutes "representative of those which are affected in varying degree" and which "regulate a phase that is also touched by the Code" requiring further checking "to delete reference to personal property . . . intended to be covered under

²⁷ KRS 382.270.

²⁸ KRS 382.330.

²⁹ *Lincoln Bank & Trust Co. v. Queenan*, Opinion by Judge Lampe, Jefferson Cir. Ct., Ch. Branch, 2d Div., pp. 2-3 (Sept. 7, 1960).

³⁰ KRS 382.270.

Article 9.”³¹ That the acknowledgment was intended to be omitted as a requirement for the financing statement under Article 9 is supported by language in the Article itself,³² by the drafter’s comment,³³ by a statement in an Opinion of the Attorney General of Kentucky³⁴ and by all authoritative comment.³⁵

Any other interpretation would fail to recognize the fundamental distinction in Article 9 between the security agreement which creates or provides for a security interest and the financing statement which is the notice provided for perfection of the security interest. KRS 382.270, by referring to deeds or mortgages which “convey” a security interest, refers to the traditional instruments, which may constitute the “security agreement” under the Code but which are not synonymous with the financing statement under section 9-402 of the Code. The financing statement does not convey and does not create anything; it is merely a short form of notice of a security interest which has been or may be created.

To relieve all doubt in the mind of the statute’s casual reader without benefit of the court construction in the *Lincoln Bank* case, it is recommended that the words in KRS 382.270, “or personal property” be deleted to make clear that the financing statement giving notice of a security interest in personal property under Article 9 is not subject to this restriction.

Similar reasoning justifies the court’s holding with respect to the necessity for statement of a maturity date in the financing statement. Again the court held the statute pre-dating the Code was repealed by necessary implication. It was not necessary, however, to hold that the earlier statute was repealed; the result in *Lincoln Bank* could have been reached more simply by construing KRS 382.330 to be inapplicable to security in personal property where Article 9 applies. There is, as with the acknowl-

³¹ LRC, Pub. No. 49, app. II, p. 399 (1957).

³² In UCC § 9-402(1) an instrument is expressly declared “sufficient” as a “financing statement” if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement describing the collateral.

³³ UCC § 9-402, comment 3 reads as follows: “This section departs from the requirements of many chattel mortgage statutes that the instrument filed be acknowledged or witnessed or accompanied by affidavits of good faith. . . . They are here abandoned in the interest of a simplified and workable filing system.”

³⁴ Attorney General of Ky., OAG 60-428 (July 14, 1960).

³⁵ LRC, Pub. No. 49, p. 378 (1957), containing introductory comment to part 4 of Article 9; Note, 47 Ky. L.J. 94 (1958); Spivack, Secured Transactions under the Uniform Commercial Code 87 (1960).

edgment requirement, the same basic distinction between the function of the financing statement and the security agreement. The financing statement is not a "mortgage" or "deed of trust" (security agreement) to which the earlier statute refers. An important feature of notice filing is that one financing statement may cover a running series of security transactions covering the described type of collateral, so that there is no need to refile "on each of the series of transactions in a continuing arrangement where collateral changes from day to day."³⁶ This makes possible the financing of transactions involving inventory. Requiring a stated maturity date in the financing statement would make it impossible for a single financing statement to cover such multiple transactions. In fact, the financing statement need not even refer to the particular debt.³⁷ Furthermore, the Code in section 9-403 covers the same subject by providing for effective security for five years where there is a failure to state the maturity date for the financed obligations (as well as providing a time limit when the financing statement attempts to provide for a longer period of security, without renewal).³⁸ KRS 382.330 could be easily amended to leave no doubt, from a reading of the statute alone, that it has no applicability to a filing under Article 9 of the Code, simply by addition of the phrase "except that this section shall not apply to the filing of financing statements under Article 9 of the Uniform Commercial Code."

The two other statutory provisions which the *Lincoln Bank* case was called upon to reconcile with the filing provisions of the Uniform Commercial Code were not "veteran" sections of the statutes but were two provisions affecting security interests in motor vehicles enacted by the 1960 General Assembly—before the Code went into effect. One of these two provisions, KRS 186.195, constitutes part of the law regulating the licensing of motor vehicles and requires the notation of liens (security interests) affecting a motor vehicle on its registration receipt. The other provision, KRS 382.675, appears in the general chapter on

³⁶ This language is used in UCC § 9-402, comment 2, explaining the nature and purpose of notice filing.

³⁷ UCC § 9-402, comment 2; Coogan, *Operating Under Article 9 of the Uniform Commercial Code Without Help or Hindrance by the "Floating Lien,"* 15 Bus. Law. 373, 383 (1960).

³⁸ The court in the *Lincoln Bank* opinion referred to this provision. 344 S.W.2d 383, 385 (Ky. 1961).

conveyances and incumbrances and requires registration of a motor vehicle as a prerequisite to the recording of an instrument conveying or reserving a security interest in a motor vehicle.

These two provisions cast a shadow of uncertainty upon the most important Code reforms. The problems the court faced in attempting to make these provisions work with the Code were several, because a motor vehicle may be characterized under the Code as "inventory," "consumer goods" or "equipment,"³⁹ and the potential impact of the provisions, in conjunction with the Code, on a given transaction depends upon the Code classification of the vehicle. Clarity will be gained, therefore, by treating the "inventory" motor vehicle separately from the "consumer goods" and "equipment" vehicle.

Inventory—New Vehicles: KRS 382.675, effective Jan. 1, 1960, provides: "No instrument conveying or reserving a security interest in a motor vehicle shall be recorded until such a vehicle has been properly registered." If applied to new cars in a dealer's inventory, the above legislation would strike two blows at the dealer's business. First, new vehicles could answer as security for loans only at the expense of their registration, a transaction that renders the vehicle a used one in the minds of many people.⁴⁰ Secondly, by requiring the registration of individual vehicles as a prerequisite to perfection of security, "floor plan" or inventory financing would be unavailable. If interpretation of the statute somehow removed the obstacle, the other provision to be discussed, KRS 186.195, requiring the notation of liens affecting a motor vehicle on its registration receipt, would necessitate security arrangements for each new vehicle.

One of the most important objectives of the Code is to make a dealer's shifting inventory available as collateral security in a practicable way. Accordingly the notice-filing concept, by which the creditor may file one financing statement to provide notice of a series of loan transactions secured by a shifting inventory,

³⁹ These categories are defined in UCC § 9-109(1), (2) and (4). This section should be read in its entirety for the precise definitions involved.

⁴⁰ "I am sure you can appreciate the fact that when a dealer receives a new car from the factory, the minute he registers it, for practical purposes it ceases to be a new car." Letter From Counsel for a national financing institution to Authors, Sept. 25, 1960.

was adopted in the Code.⁴¹ KRS 382.675 threatened to undermine this Code advantage in the motor vehicle field six months before the Code became effective. For if a creditor may safely advance money secured by inventory only by filing a separate instrument for each item of inventory, automobile inventory as security is rendered unusable at worst and undesirable at best, depending on the circumstances.

For transactions involving new inventory vehicles, there was an easy and sensible way out for the court when it met this problem in *Lincoln Bank*. New car dealers are not required by law, apart from KRS 382.675, to register individual vehicles; rather, provision is made for the issuance of one certificate of registration and one or more dealer's plates to each dealer.⁴² Neither the certificate nor a dealer's plate has reference to any particular vehicle. Further, the general statute requiring the registration of individual vehicles makes registration a condition to the owner's use of the vehicle on the highways⁴³—a privilege extended to the dealer by the issuance of dealer's plates. Coupled with the express rules of construction set out in the Code⁴⁴ and the clear purpose of its filing provisions, the scheme of dealer registration, as distinguished from owner registration, made it reasonably clear that KRS 382.675 was not intended to apply to dealers. The Court of Appeals so held in *Lincoln Bank* and the threat posed by KRS 382.675 to inventory financing of new motor vehicles was averted.

Inventory—Used Motor Vehicles. Inventory financing is equally available for used and new motor vehicles under the Code. Since used vehicles are registered when they come into the hands of the dealer, however, KRS 382.675 did not create the problem it did for new vehicles. But KRS 186.195, requiring the notation of liens affecting a motor vehicle on its registration receipt,

⁴¹ See text, *supra* note 22. See also, Kripke, *Kentucky Modernizes the Law of Chattel Security*, 48 Ky. L.J. 369 (1960).

⁴² KRS 186.070.

⁴³ KRS 186.020.

⁴⁴ UCC § 1-102(1): "This act shall be liberally construed and applied to promote its underlying purposes and policies." UCC § 1-104: "This Act being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can be avoided."

threatened again to nullify the single filing concept of the Code. If such notation was to be a necessary step in the perfection of the creditor's interest, each used vehicle in the dealer's inventory would have to be dealt with individually.⁴⁵ Although the facts of *Lincoln Bank* did not raise the specific question of used cars, the lower court concluded generally that KRS 186.195 does not apply to cars in a dealer's inventory, new or used. Pointing out that an inventory of vehicles is likely to include used vehicles, the Court of Appeals addressed itself to the question and affirmed the lower court. To apply KRS 186.195 would be incompatible with the "floating lien" concept of the Code, the court said.⁴⁶ Thus, the provisions outside the Code affecting security interests in motor vehicles are, by virtue of the court's holding, inapplicable to a dealer's inventory in both new and used vehicles, and the provisions of Article 9 stand as the exclusive way to perfect.

Consumer Goods and Equipment. The reasoning that led the court to hold KRS 382.675 and 186.195 inapplicable to motor vehicles in inventory leads inexorably to the conclusion that they do apply (if they are to have any force at all) to motor vehicles required to be registered prior to use on the highways by their owners. One of the secured transactions in the *Lincoln Bank* case was the sale of a car by a dealer to an individual who financed his purchase through the bank. The county clerk refused to file the security agreement,⁴⁷ giving as one of his reasons the failure of the bank to present the owner's registration receipt in order that the lien of the bank might be noted thereon in accordance with KRS 186.195.

That an individually-owned motor vehicle subject to an outstanding security interest is within the intendment of KRS 382.675 and 186.195 is hardly open to question. The lower court, the Court of Appeals and all of the parties assumed this much. The

⁴⁵ Kripke, *supra* note 41, at 389, points out the anomaly of noting a lien against the dealer on a registration receipt issued in the name of another. This would come about as the result of the practice of "jumping title," a not "uncommon" practice in Kentucky according to Kripke. The dealer takes the registration receipt from his seller indorsed in blank and completes the indorsement with his purchaser's name, thus "jumping title" from the original seller to the ultimate purchaser. Another recent enactment, KRS 186.076, appears to prohibit this practice. The sanction of revocation of the dealer's license and his dealer's plates should be effective, if not defeated by its own severity.

⁴⁶ *Lincoln Bank & Trust Co. v. Queenan*, 344 S.W.2d 383, 387-88 (Ky. 1961).

⁴⁷ The security agreement was signed by both parties to it, thus qualifying as a financing statement under UCC § 9-402.

heart of the problem is determining the effect that should be given KRS 186.195. Granted that liens should be noted on an owner's registration receipt, is this necessary in order to "perfect" the secured party's interest? If so, is such notation alone adequate, or must the secured party also comply with the Code by filing a financing statement? One of the parties argued ably that KRS 186.195 is an independent police measure that has no bearing on perfection of security interests.⁴⁸ Perfection, by this view, would depend on Code procedures alone. The bank took a neutral position on the question of whether the Code or KRS 186.195 provides the necessary procedures but argued strenuously that both, viz., the notation of the lien on the registration receipt *and* the filing of the lien instrument or a financing statement, should not be required as prerequisites for perfection.⁴⁹ The lien notation provision is itself silent as to effects of noncompliance. The Code procedures of course include the motor vehicle transaction, unless it falls within the exception stated in section 9-302(3)(b): "The filing provisions of this article do not apply to a security interest in property subject to a statute of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property." Section 9-302(4) adds: "A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official."

If the lien notation provision qualifies as a certificate of title law within the meaning of the above Code sections, and if language has any meaning, it is abundantly clear that such notation would provide the exclusive means of perfection. If it does not so qualify, it is equally clear under the Code that compliance with Code provisions relative to perfecting interests is adequate for that purpose. But acceptance of the first alternative is met at once with language from other statutes, and indeed from KRS 186.195(3), which indicates filing of a "lien instrument" or financing statement was contemplated in addition to notation of liens

⁴⁸ Brief for Cross—Appellant and Appellee, General Motors Acceptance Corp., pp. 19-31, Lincoln Bank & Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961).

⁴⁹ Brief for Appellant, Lincoln Bank & Trust Co., pp. 21-24, Lincoln Bank & Trust Co. v. Queenan, *supra* note 48.

on the registration receipt.⁵⁰ This led the court to reject an interpretation of KRS 186.195 that would qualify it as an exclusive perfecting device under section 9-302(3). Acceptance of the other alternative, exclusive Code perfection, seemingly leaves KRS 186.195 without an effective sanction since no penalty for non-compliance is provided therein. A third alternative, and apparently the approximate solution adopted by the lower court, is to require dual perfection. It is difficult, if possible at all, to reconcile this solution with the scheme of the Code evidenced by section 9-302.

Judge Palmore, writing for the court, aptly described the question raised by KRS 186.195 in this context as the most "treacherous" one.⁵¹ But he then deftly eluded both Scylla and Charybdis: although perfection of a security interest in a registered vehicle is accomplished by filing the financing statement required by the Code, the county clerk *may* refuse to file a financing statement in the absence of compliance with KRS 186.195. The court thus made the lien notation statute effectively enforceable without trenching upon the preserve of the Code insofar as the theory of perfection is concerned. This may make a difference in an isolated case;⁵² in the vast majority of transactions

⁵⁰ The court cited three provisions containing such language: KRS 382.740, "The lien instrument referred to in . . . 186.195 shall be filed in the same manner as financing statements are required to be filed by KRS Chapter 355."; KRS 382.770, "If the property intended as collateral is consumer goods . . . at the time the financing statement required by KRS 355.9-402 is filed, and if the property is an automobile. . . ."; KRS 186.195(3), "Whenever a lien instrument affecting a motor vehicle is presented to a county clerk for recording in any county other than the one in which the motor vehicle is registered. . . ." *Lincoln Bank & Trust Co. v. Queenan*, 344 S.W.2d 383, 386-87 (Ky. 1961).

⁵¹ *Id.* at 387.

⁵² If a financing statement covering an automobile is recorded without notation of the security interest on the owner's registration receipt, the secured party nevertheless will be protected since notation does not affect "perfection" as such. Whether this situation can arise, absent neglect by a county clerk, is not clear. Suppose A advances money to B laundry entering into a security agreement which covers certain existing equipment of B. Because the equipment is not adequate security for the amount of the loan, the agreement provides that A shall have a security interest in all after-acquired equipment of B. A files the security agreement. Subsequently B acquires a new delivery truck which he registers in his own name without indication of any security interest in A. Under UCC § 9-204, A's security interest "attaches" at the time B acquires rights in the delivery truck. Having filed a financing statement earlier, his security interest is "perfected" at the time his interest "attaches." UCC § 9-303(1). KRS 382.770, requiring financing statements to include the serial number of any motor vehicle intended as collateral, applies only to "consumer goods." Here then is a situation in which notation of an outstanding security interest on the owner's registration receipt may not occur. Since such notation is not a prerequisite of "perfection," the creditor's

(Footnote continued on next page)

secured by registered motor vehicles there is no escaping the fact that perfection of interests now involves the steps outlined in KRS 186.195 in addition to Code filing.

Preserving the effectiveness of the statute by making it an integral part of the perfection process recognizes the "manifest desire" of the legislature, the court said. Where the legislature made this desire manifest, unless it simply follows from the scheme of things, is not clear. The court itself pointed out that nothing in the statute explains the effects, if any, of noncompliance, or provides any explicit means of enforcing its mandatory terminology. The other statute, KRS 382.675, may partially fill the gap, but a very sympathetic interpretation to make it work with the Code is necessary. It refuses recordation of any "instrument conveying or reserving a security interest in a motor vehicle" until the vehicle is "properly registered." The purpose which is clear would warrant interpreting "instrument" to include a financing statement although the latter neither conveys nor reserves anything. Then, "properly registered" can be interpreted to require the notation of any outstanding liens on the registration receipt for a new car. This leaves still in doubt the source of the clerk's power to refuse recordation of a financing statement covering a used car until the security interest is noted on the registration receipt.

Surely Judge Palmore was justified in describing the problem as a "treacherous" one. The only solution that would not involve the court in either ignoring or supplying legislative text is the one which treats KRS 186.195 as an independent police measure having no bearing on or connection with perfection of interests. And this solution would most likely defeat the obvious purpose of the legislature to provide greater protection to the public by creating a "portable recording system which travels with the vehicle."⁵³ It is unfortunate that this laudable object can be achieved in this state only by localizing it for fee purposes and

(Footnote continued from preceding page)

interest is valid even against those dealing on the basis of information reflected by the owner's registration receipt. It is arguable that KRS 382.675 makes impossible the inclusion of non-inventory motor vehicles in an after-acquired-property clause. However, since a financing statement "conveys" and "reserves" nothing, such a result would be questionable.

⁵³ This phrase was used to describe the effect of certificate of title laws in Comment, 70 Yale L.J. 995, 996 (1961).

then superimposing it on an existing, local, fee-scheduled filing process. No one, to the best of our knowledge, has ever presented a reasoned argument favoring two recording schemes operating side by side for perfection of interests. If a complete and reasonable certificate of title law cannot be passed,⁵⁴ KRS 186.195 should be repealed, or it should be amended so as to provide the exclusive method for perfecting security interests in registered non-inventory vehicles. Considering the nature of the property, careful amendment may be the more satisfactory alternative.

ASSIGNMENT OF SECURITY INTEREST IN MOTOR VEHICLES

The motor vehicle statutes contain provisions covering the same subject matter as the Code concerning not only the initial perfection but also the requirements for the assignment of security interests. The *Lincoln Bank* litigation did not raise the problems which these assignment provisions create.

The Code provisions contemplate permissive filing of the assignment of a perfected security interest. Section 9-405 provides that a secured party may make his assignment of record either by indorsement on the financing statement or by the filing of a separate written statement of assignment referring to the financing statement.⁵⁵ From the viewpoint of the original secured party, one purpose in having the assignment noted of record is that inquiries concerning the transaction may thereafter be addressed not to him but to the assignee who becomes the secured party of

⁵⁴ Kentucky is one of eleven states which have no certificate of title law. Thirty-nine other states and the District of Columbia have such legislation. *Id.* at 996 nn. 10-11. In addition to the inconveniences caused in commercial transactions by this lack of adequate laws, Kentucky is one of the few "dumping grounds" or at least "conduits" for stolen automobiles. For the story of the recent break up of a huge auto-theft ring that made Kentucky laws part of its operation see Louisville Courier-Journal, June 18, 1961, § 4, p. 1. Some background concerning the efforts for and resistance to passage of a certificate of title law in the state is also developed. The drama of Kentucky's unwitting part in the theft of motor vehicles on a large scale may provide the impetus necessary for bold legislative action. A comprehensive certificate of title law is clearly more desirable than a patchwork attempt to accomplish the same objectives without disturbing any of the treasured procedures of the past.

⁵⁵ UCC § 1-102(2). Apparently the filing of notice of assignment by indication of such upon the financing statement itself is designed for cases in which there is an assignment to a financing company prior to the filing of the financing statement, whereas filing the assignment by separate instrument would be useful for subsequent assignments. See the form for annexing assignment to financing statement in Caldwell, Kentucky Form Book, Form 82A.8 (3d ed. 1956, Foster Supp. 1961).

record.⁵⁶ Such filing of the assignment, however, is not required as a condition of continuing the perfected status of the security interest against the original debtor and his creditors and transferees.⁵⁷ The assignment of the security interest under the Code may also be made effective against third parties claiming under the assignor (usually the original secured seller) by simply taking possession of the chattel paper under section 9-308. These Code provisions seem adequate enough to govern parties' rights under assignments.

The 1960 motor vehicle legislation, however, requires that an assignment shall be noted upon the registration receipt by the secured party. In the case of an assignment subsequent to the initial registration, a court could hold notation of the assignment prerequisite to presentation of the assignment for filing under the same reasoning as in the *Lincoln Bank* case requiring lien notation prerequisite to filing of financing statement. The filing of the assignment, however, may not be as vital as the filing of the financing statement, since the Code continues the perfected status of the filed security interest without filing of the assignment.

One of the several amendments, added to KRS 186.195 by separate bills of the legislature in 1960,⁵⁸ on first blush makes filing of the statement of assignment mandatory. The new language in KRS 186.195(4)(b) is as follows:

(b) The secured party shall file a statement of assignment or termination which statements [*sic*] shall be governed by the provisions of KRS 355.9-404 and 355.9-405 and any other applicable provision of law, and which must be filed within 30 days of the assignment or discharge of the security interests.

The fact that the title registration legislation was enacted later than the Code and the terminology of its requirement for filing the assignment is in mandatory form constitutes some basis

⁵⁶ See the drafter's comment to UCC § 9-405 in the 1958 Official Text of the Code.

⁵⁷ UCC § 9-302(2).

⁵⁸ Two bills, one originating in the House and the other in the Senate, were both enacted by the legislature. The House bill (H.B. 69) was enacted as Ky. Acts 1960, ch. 10, effective July 1, 1960, and the Senate bill (S.B. 41) was enacted as Ky. Acts 1960, ch. 37, effective June 16, 1960. It is paragraph (3)(b) of the House bill which was compiled in KRS 186.195(4)(b). This provision had no substantive equivalent in the Senate bill (Ky. Acts 1960, ch. 37).

for saying that the mandatory feature of the motor vehicle law controls over permissive filing under the Code. Nevertheless KRS 186.195 is itself ambiguous, in effect requiring compliance with a provision that, being permissive, demands no compliance. This indicates a misunderstanding of the Code requirements rather than a clear intention to modify the Code. In view of the Code provision that it is not to be assumed that modification of its provisions is intended without clear legislative intention to do so, this ambiguity should be resolved in favor of the Code provision. Further, there is nothing in KRS 186.195(4)(b) to make mandatory filing a step for *perfection* of the assignment. Since the court held that the other mandatory provisions of KRS 186.195 were effective only insofar as the clerk can enforce the provisions as a condition precedent to filing of the financing statement, it might as readily be held that the provision is not enforceable except where an assignment is sought to be filed or indorsed on the financing statement, there being no other provision for enforcement of the provision.

In the retail automobile financing field it is typical for the dealer to assign his security interest in the vehicle to a finance company contemporaneously with the sale under a prearranged plan whereby the finance company advances the money and takes the chattel paper of the dealer. Thus the finance company is initially the real secured party. The question therefore arises under KRS 186.195(4) whether the security interest to be noted on the registration receipt must be that of the selling dealer or whether it may be that of the financing institution to whom the dealer assigns the security interest. It should be possible to note the name of the finance company as the assignee upon the registration receipt. KRS 186.195(4) is not clear on this point. This section should be repealed and a specific provision substituted permitting either the issue of the registration receipt with the assignee financing institution named as the holder of the security interest or an indorsement of the assignment on the registration receipt.

Of even more importance than how to perfect an assignment of a security interest against parties holding under the debtor is the question of perfection of an assignment against third party claimants of the assignor, the selling dealer. When the assignee

takes possession of the chattel paper the Code gives protection against third party claimants holding under the assignor. One further provision, found in the Kentucky "Motor Vehicle Retail Installment Sales Act," has a bearing. KRS 190.100 provides that no filing of the assignment shall be necessary for its validity "as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants" of the original seller. This provision seems entirely consistent with the Code. There is, however, the question of possible conflict of KRS 190.100 with the subsequently enacted KRS 186.195(4) which seems to provide mandatory filing of the assignment.

Again, it is recommended that the latter provision be repealed and a provision consistent with the Code be substituted.

MISCELLANEOUS PROBLEMS DESERVING LEGISLATIVE ATTENTION

The subject matter of the *Lincoln Bank* litigation by no means included all the statutory provisions affecting the formal requirements for perfection of a security interest. Some of these were enacted after passage of the Code⁵⁹ in the form of amendments thereto, although they are found scattered through other portions of the statutes instead of in the appropriate Code section.

Here are some examples of piecemeal tampering with the Code's filing provisions. In 1960 the General Assembly amended KRS 382.770 to add a requirement that the financing statement under the Uniform Commercial Code contain, in addition to the information required by the Code provision (section 9-402), the serial number of each item of collateral if the property is consumer goods⁶⁰ and is of a type "normally carrying a serial number."⁶¹ If the collateral is an automobile or motor truck the motor number or identification number as well as the make, model, and year must also be given. The hidden trap for the unwary in such a provision lies in the fact that there are many items other than motor vehicles which do in fact contain serial numbers, even though the type of property involved may not be generally known to carry serial numbers. For example, there are many items of

⁵⁹ The Uniform Commercial Code was adopted on March 28, 1958 (Ky. Acts 1958, ch. 77), to become effective July 1, 1960.

⁶⁰ The consumer goods referred to is defined in UCC § 9-109(1).

⁶¹ KRS 382.770.

farm machinery, small industrial tools, wall cabinets, sinks, disposals, sanders, and other articles which may have serial numbers although the numbers are little used or known.

Another 1960 amendment to the chapter on conveyances and encumbrances provides that whenever the indebtedness secured is \$200 or more that fact shall be so stated on the financing statement.⁶² Such a provision seems to have no legitimate purpose in modern financing, especially in the field of inventory financing where a floating lien upon shifting stocks of merchandise may be created to secure varying amounts of present and future indebtedness. The historical reason for this type provision may be traced to the desire to protect the debtor and third parties in the simplest form of chattel mortgage. Both this provision and the statute providing the serial number requirement should be repealed.

Another 1960 provision in the same general category requires that a statement required to identify a financing statement by file number under Article 9 must also identify the financing statement by date.⁶³ This type provision affects Article 9 and belongs there instead of in chapter 382. It could be repealed without effect, since the same thing seems to be accomplished by section 9-403 (3), which calls for notation of the date and hour of filing. Still another such provision⁶⁴ states that the sending of a financing statement by the county clerk shall be sufficient if sent to the last known address of the party entitled to receive this statement. Again, this provision belongs in Article 9.

Still another example of this hodgepodge of added legislation affects the termination statement provided by the Code. The new provision contains a *mandatory* requirement that the secured party send to the clerk a "termination statement" within thirty days after he no longer claims a security interest in the collateral. This need be done by the secured party only when the security transaction has actually terminated, which means that no outstanding obligation and no commitment to make future advances remain. The purpose of the mandatory requirement is to prevent the record from indicating that the debtor's collateral is tied up after the debt is paid. The mandatory feature of the provision is,

⁶² KRS 382.780.

⁶³ KRS 382.750.

⁶⁴ KRS 382.760.

however, inconsistent with the Code provision, section 9-404, which does not require a termination statement unless demanded by the debtor, after which demand the termination statement must be provided within ten days. By limiting the duration of the financing statement to five years, the Code seems to protect the debtor adequately against having the property given as security tied up of record indefinitely. There are minor differences in the penalties provided by these two parallel statutes.⁶⁵ One further difference between section 9-404 and KRS 382.790 is interesting. Section 9-404 provides a fee of fifty cents for filing a termination statement, whereas, KRS 382.790 now provides seventy-five cents. This, however, might better have been provided by amendment of section 9-404 and the statute listing the county clerk's fees.

Several other items of needed patchwork stem from the fact that Kentucky, considering the Code in early 1958, adopted the 1957 draft without the 1958 changes in wording later recommended by the drafters. These changes have now been incorporated into the Pennsylvania version and by all other states which have subsequently adopted the Code. An important difference is in regard to the time for perfection of a purchase money security interest in order for it to have priority over a prior filed financial statement covering the same kind of collateral. The Kentucky draft gives the purchase money security interest priority if it "is perfected at the time the debtor receives possession of the collateral" whereas the 1958 draft allows an additional ten days after the debtor gets possession. The key words "or within ten days thereafter" should be added to section 9-312(4) at the next session of the legislature.⁶⁶ Against a transferee in bulk or a lien creditor, the holder of the purchase money interest is allowed ten days after the debtor comes into possession for perfection under the 1958 version, but the Kentucky version allows ten days after value is given, again following the 1957 language.⁶⁷ This variation, too, should be corrected to conform with the 1958 draft, and

⁶⁵ KRS 382.790. The penalty for failure to issue the termination statement under KRS 382.790 within 30 days is \$25 and any loss caused to the debtor; the penalty under UCC § 9-304 for failure to issue the termination statement within 10 days after demand is \$100 and any loss caused to the debtor.

⁶⁶ For further discussion of the importance of this error, see Kripke, *supra* note 41, at 384; Hatton, *Security Interests under the Uniform Commercial Code*, 25 Ky. S.B.J. 105, 110 (1961).

⁶⁷ UCC § 9-301(2).

minor improvements in wording in several other sections of Article 9 should be made.⁶⁸

In Kentucky there may remain at least one unanswered question with respect to the proper place for filing to perfect a security interest. It will be recalled that Kentucky adopted neither the alternative of central state-wide filing alone nor the combination of central plus local filing permitted under section 9-401 of the Code. Kentucky instead provided only local filing in the county clerk's office for all situations. The double filing alternative seemed to offer none of the advantages of either local or central filing, and Kentucky had local conditions justifying adoption of local filing.⁶⁹ Kentucky therefore designated the county of the debtor's residence, or the county where the goods are kept if the debtor is not a resident of Kentucky,⁷⁰ as the proper place to file, and in order to continue local filing exclusively omitted the catch-all provision in subsection c, "In all other cases, in the office of the Secretary of State."⁷¹ The question has been raised whether this failure to provide for other cases leaves a serious gap in the filing provision. Notice that the Kentucky version is silent where the collateral is intangible property or property other than "goods" of a non-resident debtor. Of course there is no difficulty if the debtor is a Kentucky resident irrespective of the tangible or intangible nature of the collateral, for filing is properly made in the county of the debtor's residence. Nor does any problem arise when the debtor is non-resident if the collateral is goods within Kentucky, for then filing is properly made where the goods are located.⁷² But if the property is intangibles owned by a non-resident debtor, serious questions arise.⁷³ Assuming as a matter of conflict of laws classification that Kentucky law is inapplicable, then of course the provisions governing filing in the state where the non-resident debtor resides would apply.

⁶⁸ See the 1958 changes adding new subsection (4) to UCC § 9-207, and changes in wording in UCC §§ 9-312(3)(b) and 9-501(3).

⁶⁹ To the effect that Kentucky wisely adopted only local filing in a manner which conforms to past Kentucky experience as opposed to central filing alone or the combination of central and local filing under the second alternative in the 1958 Official Text, § 9-401(1), optional para. (c), see Kripke, *supra* note 41, at 385.

⁷⁰ UCC § 9-401(1)(a).

⁷¹ UCC § 9-401(1)(c).

⁷² UCC § 9-401(1)(a).

⁷³ Hatton, *Security Interests under the Uniform Commercial Code*, 25 Ky. S.B.J. 105, 110 (1961).

Assuming as a matter of conflict of laws classification that the Kentucky version of the Code is the applicable law governing filing,⁷⁴ the omission of the catch-all governing "all other cases" would seem to result in a failure to provide a place to file. The filing provisions which necessarily govern are again those of the state of the debtor's residence.⁷⁵ This other state might provide for local filing in the county of the debtor's residence, or it might provide instead for some form of central filing for the type transaction involved. In either case, it is the filing provisions in that state which determine type of filing, the place of filing and the mechanics of filing.

⁷⁴ UCC § 1-103 states the principle so as to permit the Code state to apply the Code to transactions having "an appropriate relation to this state" and also allows freedom of choice of the applicable law by the parties if that state has a "reasonable relation" to the transaction. UCC § 9-103 provides some specific tests for determination of the applicable filing law for accounts, contract rights and general intangibles and also for equipment and inventory of a type (e.g., rolling stock) normally used in more than one jurisdiction. If the collateral is accounts or contract rights and the assignor-debtor has its office for keeping the records in Kentucky, then "this Article" is made to apply; otherwise the law of the jurisdiction where that office is located governs. "This Article," as adopted in the Kentucky version, would seem to make the proper place for filing the county of the office where the assignor-debtor's records are kept provided that "office" may be construed to have the same meaning as "debtor's residence" within the language of UCC § 9-401 (1)(a), which specifies the proper place to file. If the collateral is general intangibles or equipment or inventory of a type normally used in more than one state and the debtor's chief place of business is in Kentucky, then Article 9 is made to apply. Again, the Kentucky version of the provision for place of filing in UCC § 9-401 (1)(a) provides an answer, but only if "chief place of business" is considered equivalent in meaning to "debtor's residence" as used in the latter provision.

On the other hand if the chief place of business in the case of general intangibles or property normally used in more than one jurisdiction happens to be out of Kentucky, then UCC § 9-103(1) and (2) provides that the governing law, including the conflict of laws rules, shall be that of the place where the chief place of business is located. This should be satisfactory in most instances because most jurisdictions will provide a system of either local or central filing to govern. If, however, the conflict of laws principles of the other state should refer the matter back to Kentucky for the applicable law, there may be difficulty in view of the incompleteness of Kentucky's version of UCC § 9-401. Omission of the catch-all phrase "in all other cases in the office of the [Secretary of State]," or of some substitute phrase to take care of the special Kentucky situation, means a gap in the legislative provision so that there is simply no place to file. It might be that for rolling stock, or similar property normally kept in more than one jurisdiction, the county where inventory or equipment is temporarily located would be considered the proper county under the language, "county where the goods are kept." The comments under UCC § 9-103 in several places admit that in multistate enterprises there may be doubtful situations where it may be very difficult to resolve the question of where to file between several possible places. In case the statutory formula provided leaves such doubt the drafters suggest as one solution that the secured party file in each of the several places (see Official Comments 2 & 3 for more complete discussion).

⁷⁵ The conclusion with regard to non-resident debtors of course would apply to an out-of-state corporation, with respect to which the governing filing provisions would have to be those in the state of the principal place of business or state of incorporation.

CONCLUSION

Of far greater importance than any of the specific problems discussed in this article are the lawmaking habits they disclose. It was inevitable that questions of interpretation would be raised by certain unrepealed "veteran" legislation which is not entirely consistent with the Code. Many more such conflicts undoubtedly lurk in the statutes and their existence will not be realized until uncovered by attempts to solve concrete problems. There is every reason to believe that the court will meet the inevitable tasks of reconciliation as they arise with great intelligence and understanding. Not inevitable in any sense, however, is the *creation* of additional uncertainty by the casual introduction and passage of legislation touching subjects within the cognizance of the Code. The purpose of the Code to "simplify, clarify and modernize the law governing commercial transactions" and to "make uniform the law among the various jurisdictions" cannot be over-emphasized. Simplicity, clarity and uniformity can only be achieved in the field of commercial law by a Code that is permitted to fulfil its designed function as a comprehensive enactment. It is cause for alarm when the legislature enacts seven or eight statutes, scattered about in various chapters of the statute book, all of which conflict with or modify code provisions, *even before the Code takes effect*.

In a complex society a Code that seeks simplicity will nevertheless appear quite complex, taken as a whole, if it achieves the flexibility consonant with justice for the parties to widely varying transactions. Mastering the Code alone is a formidable task for the attorney who must handle commercial problems along with hundreds of other non-commercial legal problems in his day-to-day practice. If he cannot depend on the comprehensiveness of the Code, if he must ever be alert for a conflicting or modifying statute tucked away in another chapter and having a very uncertain meaning because its language is not of the same species as that of the Code, his ability to provide adequate counsel to the public—his clients—is diminished. Law will be complex despite all our efforts to keep it simple. Our society is not a simple one and law, responding to the needs of society, will reflect its complexities. But to manufacture complexity unnecessarily is a great evil that should be fought vigorously.

The Court of Appeals can be, but should not often have to be, depended upon to rescue the Code, at the same time saving as much as possible of a conflicting legislative program. A great deal is nevertheless lost in the process. The *Lincoln Bank* case could do nothing to remedy the uncertainty which prevailed during the year between the effective date of the questioned legislation and the issuance of the opinion. And in the future the opinion can serve to clarify its problems only after the several problems have been isolated and the *Lincoln Bank* case located by the attorney or party concerned. This is a normal process in the law's growth and the discernment of that growth. It is, however, a process that is born of necessity, that springs from our institutions. It is only the *unnecessary* multiplication of the tasks involved in this process that is to be condemned. To plead that the tendency toward such multiplication be abandoned by the legislature has been the primary purpose of this article.