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Why We Need the Uniform Commercial Code

Karl N. Llewellyn

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WHY WE NEED THE UNIFORM COMMERCIAL CODE

KARL N. LLEWELLYN*

THE BASIC EXPERIENCE

Eighty years ago bankers were swearing at the law of Bills and Notes (mostly Notes) and swearing by the two fat volumes of Daniel. Not that Daniel met the need. Paper ran across state lines, but law didn't. In addition, the law of the paper was tangled and often obscure: there were three or four different rules, for instance, on the "anomalous indorser," and what was the status of a "referee in case of need"? Still, bankers and their lawyers simply had to make out with conflict and with obscurity. James Coolidge Carter had just led the Wall Street Bar and Wall Street Opinion into clear and conclusive understanding that to codify is to kill and that man's wit cannot in our system reach to produce by way of statutory language a workable clarity and reckonability together with a reasonable flexibility. It was all very sad, and there was nothing to do but go on suffering. It was the kind of thing on which everybody knew that Wall Street, like Papa, knows best.

Except that, then, in 1897, the National Conference of Commissioners on Uniform State Laws produced the uniform Negotiable Instruments Law. For twenty-five hundred pages of Daniel they proposed to substitute twenty-five pages of code language, much of which an ordinary man can understand. For forty or fifty divergent bodies of law they proposed to substitute a single body. Where possible, they proposed to simplify and clarify matters which the cases had left obscure. Wall Street knew indeed that these goals were impossible, but somehow the N. I. L. got passed, all over the country, and bankers started to live with it and to live by it. The N. I. L. of course came

*A.B. 1915, LL.B. 1918, J.D. 1920, Yale University; Chief Reporter, Uniform Commercial Code, for Conference on Uniform State Laws and American Law Institute; author of *Cases and Materials on the Law of Sales*, *The Bramble Bush*, and other books on legal subjects; Professor of Law, University of Chicago.

under immediate severe and widely publicized attack. James Barr Ames, for instance, found a dozen fly specks on it, a few of which were real. Nevertheless, the legislatures kept adopting the N. I. L. and the governors kept signing it and the bankers not only lived under it but found they could rather easily train every last bank clerk to understand it reasonably well. If the surety was the ancient darling of the chancellor, surely the N. I. L. has become the commercial banker's darling.

Did the N. I. L. then stop litigation? It did not. But I have never seen or heard it suggested that that new body of statutory text, despite its novel language and concepts (*e.g.*, "defect in title," "holder in due course"), *increased* litigation. That is not all. There were bankers and there were lawyers around, in plenty, when I first met the practice of banking law, who had lived through the transition from Danielic chaos to the novel statutory text, had lived through the days when the N. I. L. was the law not of all states but only of such venturesome states here and there as had made the plunge, the days when no Brannan's Annotations had appeared to make available the cases which have sometimes read unhappy meanings into the text. The tales told by those elder statesmen of the early 'twenties did not run, however, in terms of any violent unsettlement of law and practice by way of the codification; rather did they report an easing in advice and in research and in argument. How indeed could it be otherwise, as life is lived outside the superstition-haunted imaginations of occasional lawyers? A well-drawn code section is forced into sharper formulation than an author's text can normally reach. The long process of discussion has opened up and taken account of more possibilities than any author or set of authors can normally think out. The more compact and simpler result is not only a fresh start which clarifies, it is also easier and quicker to get at, and the fact that it rests on conscious theory lends it guidesomeness.

Things simply are that way: good underlying theory works out in language which shapes predictable answers to cases wholly unforeseen at the time of drafting, answers "forefeelable" in the same way that *good* case law is. This can be seen in the later history of the N. I. L. It has, in the main, proved amazingly flexible and, within its flexibility, quite as predictable (if not more so) as was the preceding case law. Consider: since 1897 there has been a revolutionary change in the commercial-financial and the investment markets, there have been one intervening severe panic and the great depression, there have been two intervening world wars. But the N. I. L. is still

doing moderately well, and even after sixty years of case law it is still easier (save on a few points such as notice of defects) to find answers in an annotated N. I. L. than it used to be in Daniel.

Of course there has long been need for revision. Bonds, for instance, have no business to be lumped with short-term paper. Checks need much more attention than the N. I. L. affords. The law of confidential clerks, of protest, of "words of description," of "restrictive indorsement," and of forty other particular matters is in need of clarification or modernization or both. The law of notice to a purchaser desperately needs the clarification which the Code has gotten into a single page of text. It will be good to have the law of drafts in a set (like that on bills of lading in a set) so stated that it can be understood. And so forth.

But the points remain:

- (1) The fresh start taken in 1897 against all "expert" advice has worked out so well that some tend today to see the text as verging on the holy.
- (2) The price of the innovation, in confusion or uncertainty and rigidity, has been relatively small.
- (3) The gain in clarity, above all in accessibility, ease and cheapness of use, *and in the provision of an easy and effective filing system* for the ensuing cases, has been tremendous.
- (4) So also the gain has been tremendous in contacts by the interested layman with his law. This is no negligible value. The relevant layman has pride in this, *his* law, which is good for any citizen, especially in these days. He has reasonable understanding of it, which means (a) that he can follow advice accurately and intelligently, which cheapens business for him and for the consumer; and (b) that he can spot where and when he needs to turn to the legal expert, which in turn means risks avoided rather than incurred, which again cheapens business for us all.
- (5) Finally, to the degree that the law has become not only more certain in fact but easier to find and also to *see* (or feel) in advance as certain, that result makes for easy *and for fair* settlements. This is of particular value to the business or bank which is negotiating with an outfit of gigantic financial resources, because either inaccessibility or obscurity in the governing law can offer false color to bargaining positions which, though they be taken in ig-

norance or in arbitrariness, and despite any ultimate victory, can yet be most inconvenient and expensive to contest in court.

THE CURRENT SITUATION

Statutory Commercial Law

The course pioneered by the N. I. L. has been followed, and followed with success, in many other parts of our commercial law. The Uniform Sales Act appeared in 1906, with its most spectacular reform, the new and sharp cleavage of documents of title sharply into the "order" and the straight, bringing sudden clarity of law and practice into a whole area of commercial finance. The Uniform Warehouse Receipts Act of the same year became the bible of the warehouse industry. The year 1910 saw both the Bills of Lading Act and the Stock Transfer Act. The Conditional Sales Act of 1918 made less headway, but the Trust Receipts Act of 1933 was again a notable success in adoption and in practice. A considerable number of widely accepted commercial acts, moreover, have occupied considerable areas without the benefit of the Conference's balanced judgment and its tradition of expert draftsmanship: for instance, the family of Bulk Sales Acts, the series of acts (especially that on bank collection) sponsored by the American Bankers Association, the act in regard to inventory finance ("factor's act") urged by the finance companies, and the two warring families of acts on assignment of accounts receivable.

The results are clear to see:

- (1) The value, to lawyer, banker, and businessman, of simply stated, well-drawn statutory commercial law which makes working sense — that value has been demonstrated so often and so unmistakably that the question, *Can a code work?*, is settled forever: It can. And the question, *Does a code materially further cheapness and certainty* in business and banking operation, and in business and banking counseling, settlement, and litigation? — that question also is settled forever: It does. Similarly settled forever, and again with a resounding aye, is the question, *Can reasonable adjustment, growth, and readjustment be achieved* within the frame of a reasonably well-drawn commercial statute? As with the N. I. L., the better done portions of these other commercial acts have proved astonishingly adjustable, even

while giving solid guidance to any lawyer who is willing to counsel and draft as any good lawyer ought to, to wit, never to the outermost possible edge, always within an engineering factor or margin "of safety."

- (2) The occupation of the commercial field by these existing statutes is haphazard, and it is as spotty as measles, the edges and gaps being unplanned and bewildering. To fill out and to organize would tremendously ease speed of access to the material and to the cases under it.
- (3) Individual statutes drafted one by one over fifty years and more, by different persons under different circumstances and with different points of view, run of necessity in perplexingly different directions. The extreme example is the chattel security field, starting with the family of chattel mortgage statutes, which hark back to the first Elizabeth, and proceeding with completely different bodies of detailed rule, detailed technique, and detailed policy through conditional sale, bailment-lease, trust receipt, the "lien under a factor's act," field storage, receivables assignment, and what have you more. Rare and costly expert knowledge is called for in this area; and, even when such expert knowledge may be at hand, a general inventory lien on a moving stock of goods is commonly almost impossible of manageable attainment. For the Code to bring such a welter into a simplified, unified, functional scheme — one, too, readily accessible to *any* intelligent lawyer — has been a major achievement. Let it be noted further, that even such a result needs to be worked out and then put to work in the light of the commercial and financial whole picture: for instance, no chattel security devices, in regard to those wares which do not readily maintain identity, can alone suffice to meet financial need, however those security devices be improved. There is always to be considered the need of fresh financing or of new suppliers, which an open-ended blanket lien will bar out. One thus requires, for use at need, not only provisions for purchase-money liens but also such a device as the letter of credit, that relatively unfamiliar but highly useful machinery of finance and payment which the Code in Article 5 presents in simple and convenient form.

Not only divergent approaches among individual comparable bod-

ies of law but also changing outside conditions may call for rather severe remodeling of an older statute or body of statutes. Thus the modern bond market dates from the First World War, and its intricacies only from the flaming 'twenties; all of that was unthought of when the N. I. L. made its attempt to deal with bonds as merely an incidental subvariant of the simple commercial note. The bond, today, has long come to need the treatment the Code gives it (Article 8) as an "investment security," along with certificates of stock or of participation, and the like; and the registered bond calls also for its due attention.

To state (1) - (2) - (3) in a word: The general aims of commercial statutes can be highly furthered by recanvass of the field as a whole and in terms of the modern and foreseeable needs — using experience to help distinguish passing fad from the more permanent trend. This the Code has done. It has also greatly added to existing coverage, filling out gap after gap: thus, a single section (3-805) provides the whole almost unknown but still needed body of law on *non-negotiable bills* and *non-negotiable notes* which thus far has lain hidden in a couple of hundred scattered and badly indexed cases. Again, that constant country-wide battleground of the last forty years — the "open term" on price or time or quantity or assortment of goods under "contract" for sale — has been taken care of in such cleanly and businesslike fashion that it has struck from the experienced house counsel of one major national manufacturer the comment, "This alone would justify the whole Code."

The Bar and Commercial Law

As has been indicated, the achievements of the uniform commercial acts have been gratifying. But they do not warrant even a touch of complacency or smugness. Certainly not for the bar. For the times have been moving; it seems almost as if the times had been moving with malice upon and against the bar. Lawyers can at a pinch make out with the increasing flow of current decisions in the reports; the number of courts is, after all, limited, and so is the time of each of them. But what is the man of law to do with his inundation by new fields of governmental activity, local, state, and national, with the shifting tides of statutes about everything and anything, with the tidal wave of regulatory gobbledygook that may control, even though it never gets beyond the state of mimeo- or multigraph? As the bulk and especially the variety of pertinent rule-material has

proliferated, of rule-material in perennial shift and flux, the need becomes overwhelming to find for quick use at need *some* body of relatively compact, relatively accessible, relatively stable material which will not cost a week's research time for each ten-minute or ten-dollar consultation. It is, I think, fair to state that in the smallish patches within which they operate the bulk of the current uniform commercial acts accomplish a good deal along this line. But their coverage is too scanty to meet the need. Moreover, even the excellent and broad N. I. L. has obsolesced in sixty years, and over its more heavily litigated portions the crust of case law is thick and frequently confusing. On either count alone, doubly on their combination, a fresh start is imperative. And, as will appear hereinafter, the present condition of sales law is from the standpoint of prediction and counseling not only bafflingly obscure but, when light once gets achieved, alarming.

In result, the pressures of the times and of newer legal activities have moved the great body of the bar away from contact with the law of commerce and of commercial finance. Except to the occasional expert, it has become unknown country, and most points in it are embarrassingly hard to locate and to evaluate with any speed. The most striking single observation that emerges from my seventeen years of work on the production and discussion of the Code is the number of lawyers at committee and bar association meetings dealing with the Code to whom an accurate statement of the state of the law on points of sales or banking or security or securities came as a shock: more frequently, they knew they did not know and were surprised and displeased, or else — less frequently — they knew what simply was not so, and so were really shocked.¹ The number I refer to has run in high percentage of the lawyers present; it has mounted, over the years, in absolute figures, into the thousands. The meaning is that what used to be standard equipment at the bar has become by slow drift the property and prerogative of a relative few, the specialists, and that it is high time indeed for the Code to make this body of law accessible and moderately clear.

There is another piece of meaning. That is, that adverse criti-

¹I think of a leading lawyer in the field who took the flat and fighting position that the bar and the profession would never tolerate a provision that a mere signature would serve as a blank stock power. He had to be shown that such a provision in the Stock Transfer Act was law in 48 states. It should be noted that even Paton's admirable and indispensable Digest is outstanding for the number of situations in which the available opinion has to run in terms of *non*-certainty.

cism of the Code in terms of how it compares with the existing law is criticism which should be watched carefully for its source, and with a particular eye to the question, Is the assumed *present* state of the law in fact the *real* present state of the law? *Informed* criticism of the Code, whether in such careful and hard-working committees as those of the Pennsylvania Chamber of Commerce and those of the Chicago Bar Association or in the careful and informed detailed studies in the law reviews and the various state annotations, has with amazing regularity taken a consistent and very comforting course all over the country.

The informed critics find the Code to contain much less innovation than anybody would think *who did not happen to know the better and more commercial case law*. The informed critics then go on, again regularly, to approve some three quarters to four fifths of the choices made by the Code, and to divide as to the rest somewhat evenly among neutrality, skepticism, and sharp disapproval. The exciting thing next to notice is that the points *disapproved* do not cumulate, but vary from critic to critic. What this comes to is that the democratic process which produced the Code — over a period of more than fifteen years, out of the labors of more than fifteen hundred skillful lawyers — has been a process whose end result — thank God — leaves unsatisfied *some* desires of any lawyer and of any committee of lawyers. The fifteen hundred *others* have been heard, and have proved persuasive.²

²There are upwards of a hundred material places on which as Chief Reporter I was outvoted on a position I believed in and was fighting for. I doubt if time and thought have brought me round on as many as one sixth of such points; a good twenty and more still cause grief which is acute. But it should give any person comfort in regard to the probable wisdom even of details which he finds bothersome to realize that such details represent, regularly, repeated majority votes of different but highly intelligent bodies of lawyers, after informed and sustained meditation and discussion. Approval was obtained only after the "long tour" over (1) central drafting staff, (2) advisors' committee, (3) Commercial Acts or Property Section of the Conference, (4) Council of the Institute, (5) the floor — and typically *twice* to the floor, each time after the full prior tour. That long tour was avoided by only relatively few sections during the process of final revision. Even that last "speedy tour" was not so speedy. It represented typically a full discussion in either the New York Law Revision Commission or the Pennsylvania Chamber of Commerce Committee, followed by a full discussion in the relevant subcommittee of the sponsors, followed by a discussion in the Enlarged Joint Editorial Board, which was very far indeed from rubber-stamping; and the subcommittees and Joint Editorial Board went over the great bulk of the material twice, with long pondering time between.

PRACTICE UNDER THE CODE

The Technical Form

One worry to any lawyer, when he faces up to legislation of any volume, is the question of how to find what he may need, and above all the question of how the parts hang together and how he may be sure — without seven months of anticipatory study — that when using one part he will not be overlooking something else which not only bears on but perhaps may unexpectedly decide his problem. On this the Uniform Commercial Code carries as complete a set of aids and safeguards as any statute ever put forward in this country.

The section captions are given full value as parts of the Code (Section 1-109). They are rather full. They have been worked over, again and again, by many different hands, to make sure that there is some attention-challenging word or phrase in the caption to guide to each piece of material in the section. In result an alphabetical index is bound to be remarkably complete, regardless of whether the indexer has skill.

The Code comes, moreover, accompanied by a comment on every section, prepared, as was the Code itself, under the joint auspices of the Conference of Commissioners on Uniform State Laws and the American Law Institute. These comments are very useful in presenting something of the background and purposes of the sections, and of the way in which the details and policies build into a whole. In these aspects they greatly aid understanding and construction. But on the point here under direct consideration they are priceless. They signal *every* word in the section which is for Code purposes a term of art, and tell where each such term is defined. They provide also a painstaking set of cross-references to other relevant material in the Code. This is in addition to references to relevant sections of prior uniform commercial acts.

The lawyer's problem is not really met, however, even by making sure that all passages in point are forced to his attention, together with their reasons. And the Code project has proceeded to go far beyond the Code, in order to serve the lawyer. Already produced and in process of production is a whole series of materials on "Wise Practice Under the Code."

Counseling and Results

Discussion of the N. I. L. has rarely pointed out one striking

fact about that statute: it divides into two completely different portions. One part is addressed in first instance to courts and lays down — in good part in wisely general language — guidance for decisions in disputes in court. The other portion, though it also guides a court, comes close to being a manual for bankers' practice — for example, in regard to proceedings on dishonor. There is no question that one large portion of the value of the N. I. L. has lain in this guidance for operation under it, nor is there question that one of the most unhappy lacks in our legal literature is the scantiness of information about what advice some expert has given in the situation with good results — the scantiness of the kind of information which is one main feature of any practitioner's text on medicine ("Dr. Cox's procedure," "the Katzendorff transfusion," etc.).

Now if there be one feature of the Uniform Commercial Code which ought to line up for its immediate adoption every lawyer in any state except the two to four dozen true experts who no longer need such help, it is that the Code comes — over and above the comments — companioned with this kind of expert, articulate, and detailed guidance on procedure under its provisions.

This is partly a product of the personnel who have been in key positions in the drafting and who have in consequence tended strongly to shape the structure and much of the drafting method. Such key personnel have been familiar with practical commercial and financial operations and needs and have organized the material and for the most part phrased it to guide operation as well as decision; indeed, so far as accuracy and time have permitted, to guide a layman along with his counsel. For this the above mentioned portions of the N. I. L. served as stimulus and model.

But there is much more. Save for minor revisions, the Code has been in form to use since 1952, and in use in Pennsylvania since 1953. Pennsylvania was a curiously happy commonwealth to serve as a general tryout jurisdiction, ranging in activity as it does from the metropolitan to the mountain-rural, from the heaviest industry to the lightest, and to varied farming. The Code has therefore been tested in workability and in result in a way in which no other "novel" statute ever offered to the country has been tested. Occasional difficulties have developed, and remedies have been devised therefor, by years of high-powered study by committees of banking counsel and of the Pennsylvania Chamber of Commerce.³ Three observations emerge,

³The results of these studies, as well as those by the New York Law Revision Commission, are incorporated in the 1957 Official Edition of the Code.

after this longish period of use and of intensive study:

- (1) Among the practical experts there is no suggestion that the Code be repealed.
- (2) The process of adjusting practice and advice to the Code has not been found difficult, and prevailing opinion runs among the experts to the belief that the Code has materially increased, not decreased, certainty.
- (3) The values of the Code in the home-Commonwealth are felt to greatly outweigh the fact that non-Code law still prevails across the borders.

This might seem to be enough. But, as suggested, there is more which is of curious value.

Thus, for instance, there is available in printed form the experience, and the judgment and *recommendations for operation* under the Code, of one of the leading banking counsel in Pennsylvania. There is available (though in the current edition it rests on an Article 9 which has since been somewhat amended in relevant portions) a superb practice manual in regard to chattel security operation under the Code. Business forms built to fit Article 2 on Sales have been prepared and can be secured, and an elaborate discussion of sales practice under that article is in preparation. Thus before any 1959 legislature can adopt the Code, and certainly before any appropriate effective date (one year being decently allowed for bar and business readjustment), it is to be expected on most matters that short, cheap manuals will be ready: ready to provide the Uniform Commercial Code— itself a truly commercial and commercially intelligible statute— with an implementation in cheap and simple terms for sound commercial and financial use which will surpass that available currently for any body of law in these United States.⁴

Let a lawyer, finally, consider this— the entire library needed for effective practice under the Code will take up six inches of shelf space: an inch for text and comments, a half-inch each for the straight text, the annotations to past local law, the manual on sales, the manual on commercial banking, and a miscellaneous manual, with a final whole inch (at most) for the manual on chattel security. All for the price of any ordinary treatise.

⁴Consult the American Law Institute for the most recent information and plans in regard to this type of material.

CONTENT AND ARRANGEMENT

What is the content of this Uniform Commercial Code? Certain obviously vital fields of commerce are out by virtue of our federal system and its tradition: thus it is not for a uniform state law to deal with the carriage of goods by sea, the contract for interstate carriage, or with marine insurance, or with bankruptcy. Business organization and insurance on goods otherwise than in carriage are omitted because local insistence on state control of the business corporation and of the insurance business are too firmly established to make uniform legislation seem possible. In essence, then, the Code carries forward and supplements the fields already occupied by one or another of the widely adopted commercial statutes.

The heart of the Code — though it has been less discussed than the banking provisions — is Article 2, on Sales, the movement of wares in commerce, the subject-matter of the old Uniform Sales Act and of the more-than-century-old early Factors Acts (on the last compare Sections 2-403, 7-205, and 7-503). The current law of sales is curiously blind in regard to disputes between buyer and seller, making the answer turn technically on when the property in the goods is to pass, which in turn depends on the intentions of the parties on the matter, which, finally, is a matter to which the parties (except in conditional sales) do not address attention and on which they therefore have no intention at all. In addition the law of remedies in sales cases is technical, tricky, and inadequate (in spite of Waite's masterly effort to gather the more usable cases into formative shape). Finally, there are scattered through the field an unpleasant number of technical traps for a buyer or seller who is operating merely on horse sense, business knowledge, and good faith. The result has been that for more than half a century *commercial* sales disputes have tended increasingly and overwhelmingly to move out of the courts into arbitration or trade association adjustment — except in time of market crisis. In such times of crisis, however, the technical traps come to light, the cases come to court, and the results, despite all efforts of the courts, repeatedly "do make each several hair stand up on end." Article 2 of the Code, rejecting that part of the legal tradition of the field which rests on Ellenborough and Benjamin, picks up the more commercial line of legal tradition which traces out of Mansfield and Blackburn, in this country out of Parker, Cowen, Hough, and Hand. The rules between seller and buyer are stated in terms of the issues and of the facts which sellers and buyers *do* think about; technical traps are

eliminated; good faith interpretation and action are protected so far as circumstances will permit; and if it does come to litigation the remedies are made flexible and are freed from delay, trickery, and technicality. Article 2 deserves the praise which that great commercial lawyer Hiram Thomas gave it.⁵

The storage of goods and those phases of carriage which affect buyer, seller, and financier are carried forward from the present Warehouse Receipts and Bills of Lading and Pomerene Acts with relatively few changes and with material useful supplement.

The financing of commerce, however, comes in for vigorous and novel treatment. Drafts with bills of lading attached receive new codification in accordance with practice and need (Article 4, Part 5), and the discount "subject to charge-back" situation is explicitly made to protect a banker who acts in good faith (Section 1-201 (44)). Bonded warehousing practice is recognized (Section 7-201). And, especially, the whole of Article 9 brings into simplified and workable form the law of all chattel security, whether the asset be tangible, or be a single contract or accounts receivable transferred at wholesale or other intangibles; whether it be farm produce (grown or future), or raw or finished merchandise. It is interesting, in view of the opening up of blanket chattel liens by these provisions, to find the Pennsylvania members of the National Association of Credit Men reporting to their association in favor of the Code: its central notice-filing provisions make it cheap and easy for the prospective seller to find out just where he is at.⁶ And it will be recalled that Article 5, the new, simple, and flexible codification of the law of letters of credit, offers the needed machinery for financing any later single delivery which might be endangered by the blanket lien. Meantime, Article 6 picks up the direct interest of the unsecured creditor by offering a modernized and very pretty version of a Bulk Sales Act.

Articles 3 and 8, on Commercial Paper and Investment Securities, grow, as has been indicated, out of the existing N. I. L. and Uniform Stock Transfer Act, the latter being expanded to cover all types of investment securities and also to deal with the machinery of transfer and reissue in the case of stock and of registered bonds. Article 4 on Bank Collections picks up and organizes in modern fashion that wholesale handling of payment-paper which we know as "the collec-

⁵The Proposed New Uniform Sales Act, 2 *Business Lawyer*, No. 3, p. 16 (July, 1947). Article 2 has not been changed materially since Thomas wrote.

⁶In 59 *Credit and Financial Management*, 16 (29 Dec. 1957), Roper reports on his inquiries.

tion-float." The essential theory of law there applied is that the whole public which consumes bankers' services is best served by speed and by such rules as make for maximum speed in the non-trouble-making case.

But it would be unfortunate and misleading to leave even such a cursory survey of content as this without giving a few illustrations in passing of the kind of service to the lawyer, businessman, and banker which the Code performs, so to speak, with effects as little noticed but as pleasant as a nice girl's friendly greeting. Let me start with Article 3, of which a general description might be merely that it concisely states the better case law under the N. I. L., cures a few old blobs, and rounds out and clears up operating questions in the event of dishonor. Take Section 3-105 on "unconditional." It clears up the vexing "as per" question. It settles the mean question, never yet litigated, of the draft that refers on its face to a specific letter of credit, which in turn states explicit conditions. It gives status to instruments limited to a particular government source or to the assets of an association or of a trust or of an estate. Section 3-107 clears up the question of an amount stated in terms of a foreign currency. Section 3-110 gives status to instruments drawn abroad without the magic word "order," but which state that they are "exchange." (The N. I. L. forgot those.) The section also gives status to an instrument drawn to the order of a trust or estate. It kills the crazy rule that a certificate of deposit is negotiable because it calls, before payment, for indorsement by the payee, and kills also the ugly possibility that those check forms which add "or bearer" at the end of the payee line can thereby free the drawer from responsibility for genuineness of the payee's signature.

This short series of little but vital improvements in convenience, clarity, sense, completeness, or all four, is typical of any sequence of sections anywhere in the Code. The total of such matters approaches or reaches four figures. It is astounding. Nobody talks about it. Even an expert reviewer of a single article is likely to find three quarters or nine tenths of such matters to call for no mention: they are not controversial, nor *one by one* are they large; they are just nice. But in cumulation, in heaped-up, mountainous cumulation, they become terrific: terrific in their majestic contribution.

THE NET

Let me sum up, paying for the moment no attention to the pos-

sibility that other states have adopted or may adopt the Code. Let me use Pennsylvania only to show satisfaction with the Code's substance and form, and to demonstrate that such satisfaction runs happily free from what men think or do in Wall Street. Let me use Massachusetts only to show that commercial lawyers, bankers, warehousemen, stock brokers, businessmen, and labor unions who examine the Uniform Commercial Code carefully on its merits find it good.

- (1) If all the Code did had been to put into clear and accessible form *some* rule on the several thousand points it covers, that would alone, in the present state of the bar's knowledge and of the law's inaccessibility, make it worth adoption.
- (2) If all the Code did had been to clear up confusion and pick the wiser rule and cure obsolete and unfair rules which lay traps, in regard to the hundreds of points on which it does one or all of these things, that would alone, in the present condition of commercial law, make the Code worth adoption.
- (3) If all the Code did had been to reorganize the law of sales, collections, investment securities, and chattel security to fit modern need and for easy use, that would alone make it worth adopting.
- (4) If all the Code did had been to elicit and make available that body of accessible wisdom on how to handle the counseling phases of commerce and commercial finance which has been built around the Code, that alone, in the present state of legal literature, would make the Code worth adopting.

But the Code does each of these things. It does them all at once.

To this, one adds the very interesting section on Parties' Power to Choose Applicable Law (Section 1-105 (1)), and one meditates further on the high probability that 1959 will become "Code Year" in these United States.