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Chapter 1: General Statement

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P A R T I

Symposium: Uniform Commercial Code

C H A P T E R 1

General Statement

WALTER D. MALCOLM

§1.1. History of the Uniform Commercial Code. The Uniform Commercial Code¹ represents the results of seventeen years of effort by the legal profession to improve the law and some of the tools for working with the law. In developing the Code the combined resources and experience of the National Conference of Commissioners on Uniform State Laws and the American Law Institute have been utilized in full. No less than a hundred judges, lawyers and law professors have spent very substantial amounts of time in work on the Code and no less than a thousand lawyers have contributed materially to it. Outside of the legal profession, business firms, trade associations and like groups have contributed analyses and explanations of business practices. Legislative research commissions of some ten states have studied the Code extensively and made reports of their findings.

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§1.1. ¹ Enacted in Massachusetts as Chapter 765 of the Acts of 1957, G.L., c. 106, and signed by the Governor on September 21, 1957, to become effective October 1, 1958. The official text of Chapter 106 has appeared in the usual official publications and, in addition, has been published as a special supplement to the Annotated Laws of Massachusetts (1958). This supplement also contains the Massachusetts Annotations and the Official Comments of the organizations sponsoring the Uniform Commercial Code.

Large contributions of funds have been made by foundations, business firms and law firms.

The Code has been sponsored nationally by two organizations: the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

The National Conference of Commissioners on Uniform State Laws has been in existence since the 1890's and is the organization that is responsible for the many uniform acts on the statute books of Massachusetts, and all other states of the United States today. Among other uniform acts promulgated by the Conference and enacted in Massachusetts, with dates of adoption and statutory references, are the following:

- Uniform Negotiable Instruments Law — 1898, G.L., c. 107, §§18-212
- Uniform Warehouse Receipts Act — 1907, G.L., c. 105, §§7-66
- Uniform Sales Act — 1908, G.L., c. 106, §§3-65
- Uniform Bills of Lading Act — 1910, G.L., c. 108, §§1-51
- Uniform Stock Transfer Act — 1910, G.L., c. 155, §§24-44
- Uniform Trust Receipts Act — 1936, G.L., c. 255A, §§1-21

The American Law Institute is made up of leading judges, lawyers and professors of law. Founded in the early 1920's it spent nearly twenty years preparing a series of Restatements of the Law in the fields of contracts, property, torts, agency and other subjects. The general value of these Restatements to the courts and to the legal profession and indirectly to the public generally may be indicated by the fact that they have been cited by courts in published decisions not less than 24,000 times.

The underlying purposes and policies of the Code are thus stated in Code Section 1-102:

- (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 parties;
- (c) to make uniform the law among the various jurisdictions.²

A major framework of the commercial law of the country today is the group of uniform commercial acts listed above which were sponsored by the National Conference of Commissioners on Uniform State Laws. With the exception of the Uniform Trust Receipts Act all of these commercial acts were drafted and promulgated around the turn of the century. The basic reason for the Code is the recognition that in the period since 1900 there has been tremendous growth in the commercial activity of the country; that in many areas new patterns of commerce have sprung up and in others material changes have oc-

² UCC §1-102(2).

curred; that the 1900 versions of our commercial acts do not adequately handle these new patterns of activity and these changes, with the result that there is very real need for an "updating" of the commercial law.

The principal incentive impelling the Code project in 1940 was the desire of certain business groups for a modernizing and updating of the Sales Act; and the early years of the Code project from 1940 to 1944 were devoted primarily to the drafting of Article 2 of the Code on Sales. Drafting of the remaining articles of the Code took place during the period from 1944 to 1952. The project was financed to the extent of approximately \$400,000 by grants from foundations and gifts from business houses and law firms. It has also been made possible by the expenditure of many thousands of hours of time donated by hundreds of judges, law professors, lawyers and some businessmen.

In 1951 a definitive text of the Code was completed and approved by the two sponsoring organizations and by the House of Delegates of the American Bar Association. Completion of editorial work, drafting of comments and printing continued for another year so that a full Text and Comments Edition was available for the first time in 1952. In Massachusetts, a bill embodying the Code was prepared and filed in December 1952 for consideration by the 1953 session of the General Court. That bill was referred to a Special Legislative Commission composed of two Senators, three members of the House of Representatives and four appointees of the Governor. In January 1954 this Commission filed its report,³ in which a majority of six of the Commission recommended immediate enactment of the Code in Massachusetts. A minority of three opposed immediate enactment and recommended further study of the Code by various means.

Outside of Massachusetts the legislature of Pennsylvania in the spring of 1953 voted to enact the Code there, and enactment became effective July 1, 1954. The Code has now been the controlling commercial law of Pennsylvania for well over three years. With only a few exceptions, the consistent reports from banks, business houses, lawyers and other interested parties in Pennsylvania are to the effect that the Code in its original form is working entirely satisfactorily; it caused no serious dislocation to the commerce, business or economy of the state in the transition period from prior law; and it represents a very substantial improvement over the law that it replaced.

In the state of New York a Code bill was also presented to the 1953 session of the New York Legislature and was referred in the spring of that year to the Law Revision Commission of New York for study and report. From 1953 to 1956 the New York Commission held numerous public hearings and made an extremely extensive review and study of the Code. During this same period, other studies of the Code were made by legislative research bureaus of some other states,

³ House No. 2400 (1954).

by bar association and trade association groups, and by numerous individuals.

To take advantage of the experience with the Code in Pennsylvania, the public hearings and the study of the New York Law Revision Commission and the studies by other groups and individuals, the sponsoring organizations, through the medium of an Editorial Board and nine different subcommittees (one for each Article), followed closely all of these studies and developments and in late 1956 completed a substantial number of revisions of the 1952 text of the Code as enacted in Pennsylvania. All of these changes resulting from this extensive "second look" at the Code have been published in a series of volumes by the sponsoring organizations and the same changes (with a very few special Massachusetts variations) appear in Chapter 765 of the Acts of 1957 enacted by the Massachusetts General Court.⁴

§1.2. **General Laws sections amended and repealed.** Chapter 765 of the Acts of 1957 effects the enactment (effective date October 1, 1958) of the Code by repealing a considerable number of chapters and sections of the General Laws and by amending certain other sections, as follows:

Chapters or Sections Repealed

G.L., c. 105, §§7-54, 65, 66	G.L., c. 159, §§55, 56
G.L., c. 106	G.L., c. 167, §§53, 55
G.L., c. 107, §§5, 6, 9, 11, 12, 14-45, 46-212	G.L., c. 184, §13
G.L., c. 107A	G.L., c. 255, §§1-7C, 7E-11, 13A, 13D-13F, 13H, 40-47
G.L., c. 108, §§1-41, 49-51	G.L., c. 255A
G.L., c. 140, §§92, 93	G.L., c. 262, §34, Clauses (47)- (53), (56)
G.L., c. 155, §§24-44	

Sections Amended

G.L., c. 4, §7	G.L., c. 223, §50
G.L., c. 104, §4	G.L., c. 223, §83A
G.L., c. 105, §1	G.L., c. 255, §§12, 12A, 12B, 13, 13B, 13C, 13G
G.L., c. 140, §108	
G.L., c. 155, §46	

An explanation of these sections of Chapter 765 repealing or amending chapters or sections of the General Laws appears in the Special Supplement to the Annotated Laws of Massachusetts (1958).

⁴ The sponsors published three volumes: (1) a 315-page volume entitled "1956 Recommendations of the Editorial Board for the Uniform Commercial Code," in which language deleted from the 1952 Text is shown in square brackets and new language shown in italics; (2) a 223-page volume entitled "Uniform Commercial Code—1957 Official Edition," constituting the 1957 Revised Text of the Code; (3) a 751-page volume entitled "Uniform Commercial Code—1957 Official Text with Comments," comprising the 1957 Text of the Code with Comments updated to this 1957 text. The Massachusetts Annotations appear in the Special Supplement to The Annotated Laws of Massachusetts.

In general, the Code makes no revolutionary change in the commercial law of Massachusetts. It is not a “professor’s dream” of what the law ought to be. It is a painstaking, careful, practical solution of the problem of adapting our law to meet the expanding needs of modern business and the society in which we live. The following chapters contain brief summaries of each of the nine substantive articles of the Code.