The Uniform Commercial Code in Illinois

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It seems safe to say that the longest bill awaiting the attention of the Illinois General Assembly is the Uniform Commercial Code drafted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute and endorsed by the American Bar Association. In view of the length, scope and complexity of the Code, the Board of Editors suggested to the writer that a relatively non-technical article dealing with the Code in its entirety, pointing out the major changes which it would effect in Illinois law, and advising as to the desirability of its adoption, might be helpful to legislators, members of the Bar and other interested persons.

Briefly stated, the Code covers the law of sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading and other documents of title, investment securities, and security interests in personal property. It would supersede our existing Uniform Laws on Sales, Negotiable Instruments, Warehouse Receipts, Bills of Lading, Trust Receipts and Stock Transfer. It would supersede our statutes relating to bulk sales, chattel mortgages, factor’s liens, and assignment of accounts receivable. Because the Code is in general more detailed than the older

1 1957 Official Text with Comments (hereinafter cited as UCC).
2 Ill. Rev. Stats. (1957) c. 121, §§ 1-77 (hereinafter cited as USA); c. 98, §§ 21-218 (hereinafter cited as INIL because of numerous variations); c. 114, §§ 233-292 (hereinafter cited as UWRA); c. 27, §§ 2-56 (hereinafter cited as UBLA); c. 1214, §§ 166-187 (hereinafter cited as UTRA); and c. 32, §§ 416-439 (hereinafter cited as USTA).
3 Ibid., c. 1214, §§ 78-80a; c. 95, §§ 1-8; c. 82, §§ 102-112; and c. 1214, §§ 220-222.

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uniform laws and other statutes, it would supersede, also, a great deal
of case law governing matters not presently covered by statute, not
to mention case law construing the statutes named. In addition, the
Code would fill gaps in our law arising from our own failure to adopt
the Uniform Conditional Sales Act, from the invalidation of the
Bank Collection Code, and from the absence of legislation according
negotiability to registered bonds and certain other types of invest-
ment securities.

The Uniform Commercial Code has been in effect in Pennsylvania
since 1954. Following extensive hearings and an adverse report of
the New York Law Revision Commission, the Code was revised to
meet objections and subsequently was adopted in Massachusetts and
Kentucky. Undoubtedly it will be resubmitted in New York in 1959.
It was first introduced in the Illinois legislature in 1953, but has not
been pressed. A joint Committee of the Illinois State and Chicago
Bar Associations is presently studying it. By reason of the magnitude
of the undertaking to appraise its merits and because of contingencies
involving other legislation, it is too early to say whether it will be a
live topic for the 71st Illinois General Assembly or whether it will
be reserved for the 1961 session.

The ultimate decision as to its adoption in Illinois must be based
on a detailed analysis of its provisions, their technical workability,
and the changes they would effect in the existing law of this State,
particularly in the impact of numerous determinations of policy upon
groups and activities which would be affected. Fortunately, a large
part of the spade-work has been done. With the object of presenting

6 Study of the Uniform Commercial Code, Memoranda Presented to the Commission,
and Stenographic Report of Public Hearings on the Code, Leg. Doc. No. 65 (1955); and
65A (1956).
9 Symposium, 53 Nw. U. L. Rev. 315-426 (1958); Trumbull, The Proposed Uniform
(partially obsolete by reason of subsequent revision of the Code and the adoption of
Leading articles not specifically dealing with Illinois law, and also partially obsolete by
reason of subsequent revision of the Code, are Williston, The Law of Sales in the Pro-
posed Uniform Commercial Code, 63 Harv. L. Rev. 561 (1956); Corbin, The Uniform
introductory information and comment for the reader not yet familiar with the Code, this present article will avoid technical problems of construction and refinements of distinction and confine itself to the more important changes effected by the Code, either in its approach to commercial problems or in their resolution; and, finally, the writer will give his opinion as to the quality of draftsmanship and over-all workability of the Code. The first order of business is to consider each of the Articles of the Code separately.

ARTICLE 1. GENERAL PROVISIONS

The general provisions applicable, except as otherwise provided, to all the substantive Articles of the Code encourage liberal construction, freedom of contract within the minimum requirements of good faith, diligence, reasonableness and care prescribed by the Act, choice of law on any reasonable basis, the continuing growth of mercantile custom, and the recognition of usages of trade without limitation by common law requirements that a custom be immemorial and universal. Forty-six terms are defined, of which only those relating to notice and notification presage substantial changes in law. Since a person is to have notice of a fact, not only when he has actual knowledge of it or reason to know it, but also whenever he has received a notification of it, and if a member of an organization, from the time when it would have been brought to his attention if the organization had exercised due diligence,\(^1\) a considerable departure is made from

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\(^1\) UCC, Section 1-201 (25) and (27).
the subjective tests of knowledge and good faith familiar under existing uniform laws as presently construed.\textsuperscript{11}

\textbf{ARTICLE 2. SALES}

The Code makes extensive changes in the law of sales of personal property. The following summary, though by no means complete, is believed adequate for an initial appraisal of the improvements afforded by the Sales Article of the Code.

\textit{Risk of loss and specific remedies}

The greatest change in approach to the law of sales is the abandonment of title or "property in the goods" as the determinant of the incidence of loss and of rights and remedies of buyer and seller, respectively. These matters are all dealt with directly rather than in terms of whether the property in the goods has passed from seller to buyer. While the extent of change in the rules themselves is less drastic than the change in the manner in which they are expressed, substantial innovations of policy will result.

Risk of loss, when the seller is to ship the goods by carrier but not to deliver at destination, will pass to the buyer upon shipment, and in destination contracts upon tender at destination, as under present law.\textsuperscript{12} The incidence of risk as to goods sold while in the hands of a bailee is not substantially changed, but the risk of loss of goods in the possession of the seller and not to be delivered by carrier passes to the buyer only when he acquires possession, if the seller is a merchant dealing in goods of that kind, otherwise upon tender of delivery to the buyer.\textsuperscript{13} This departs sharply from present law in the case of specific goods and goods ascertained and unconditionally appropriated to the contract while still in seller's possession.\textsuperscript{14} Relating risk to possession rather than title seems to be an improvement, particularly since it is more usual and practicable for the party in possession to carry insurance on the goods.

Unlike present law, the Code recognizes the virtually universal existence of insurance. The buyer is stated to have an insurable interest in goods upon their "identification" to the contract by the seller

\textsuperscript{11} E.g., INIL, § 56, Graham v. White-Phillips Co., 296 U.S. 27 (1935) (prior notice identifying stolen securities not present in mind of agent purchasing them).
\textsuperscript{12} UCC, Section 2-509 (1). Cf. USA, § 19, Rules 4 and 5; § 22.
\textsuperscript{13} UCC, Section 2-509 (2) and (3).
\textsuperscript{14} USA, § 19, Rules 1, 2 and 4; § 22.
or by both parties, and the seller is stated to retain an insurable interest as long as title to or any security interest in the goods remains in him. The buyer who rightfully revokes acceptance of non-conforming goods may treat the risk of loss as having rested on the seller, but only to the extent of any deficiency in buyer's insurance; if the buyer repudiates the contract or wrongfully rejects conforming goods, the seller may treat the risk of loss as having rested on the buyer, but only to the extent of any deficiency in seller's insurance. This distribution of risk is not intended to be disturbed by any subrogation of the insurer.

Under present law the seller's action for the price accrues absolutely on the passing of the property in the goods or on a day certain fixed in the contract, irrespective of passing of title or delivery, but under the Code the seller's action for the price accrues absolutely only as to goods accepted by the buyer and as to conforming goods which are lost or damaged after risk of their loss has passed to the buyer; in all other circumstances, the seller may sue for the price only when he is unable to resell the goods at a reasonable price, a considerable change in the law.

A similar change is made in the availability of the buyer's action to obtain the goods. While the relatively infrequent right to specific performance appears to remain substantially the same as under the present law, the buyer's right to replevin, which now accrues absolutely when the property in the goods passes to him, is limited by the Code to circumstances when he is unable to effect "cover," that is, obtain substitute goods at a reasonable price.

These provisions reflect a recognition that it is commercially reasonable to place on the seller the responsibility for disposing of rejected goods, as long as he is in control of them, and that in the ordinary case money damages are an adequate and commercially reasonable remedy for the buyer in the event of seller's failure to deliver the goods.

By substituting the concept of "revocation of acceptance" for rescission and abolishing the doctrine of buyer's election of remedies, the Code removes from the law governing remedies for breach of

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15 UCC, Section 2-501.
16 UCC, Section 2-510, and Comment 3.
17 UCC, Section 2-709. Cf. USA, § 63.
18 UCC, Section 2-716. Cf. USA, §§ 66 and 68.
warranty arbitrary distinctions whose application has been rendered uncertain by reason of the necessity of determining whether the property in the goods has passed.\textsuperscript{19}

\textit{Title}

While, as illustrated by the foregoing, risk of loss and remedies of buyer and seller do not, under the Code, depend upon the location of title or property in the goods, the time of passing of title may become important in the application of tax laws, price regulations and other matters outside sales law proper. For such purposes the Code lays down rules which for the most part conform to present concepts. Greater certainty should be achieved, however, since these rules are to be applied "unless otherwise explicitly agreed" rather than "unless a different intention appears" as under present law.\textsuperscript{20}

The Code will not affect the rights under Illinois law of creditors of the seller to goods left in his possession after the sale, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after the sale may not be treated as fraudulent.\textsuperscript{21} An analogous provision subjects goods held on consignment for sale to the claims of creditors of the consignee unless he is generally known by his creditors to be engaged in selling the goods of others or unless a record is made of the consignor's interest by filing under Article 9 of the Code—a change in the law.\textsuperscript{22}

The principle under which subsequent purchasers from a seller left in possession may prevail over the original buyer is continued, but extended into the general proposition that any entrusting of possession of goods to a merchant who deals in goods of that kind, regardless of the purpose of the entrusting, gives the merchant power to transfer all rights of the entruster to a buyer in the ordinary course of business.\textsuperscript{23} This is a far-reaching change in the law, but certainly a beneficial one in the interests of encouraging commerce and upholding the reasonable expectations of buyers.

\textsuperscript{19} UCC, Sections 2-608 and 2-711. Cf. USA, § 69 (2).

\textsuperscript{20} UCC, Section 2-401.

\textsuperscript{21} UCC, Section 2-402. Cf. USA, § 26; In re Enterprise Foundry Co., 37 F. Supp. 745 (N.D. Ill., 1941).

\textsuperscript{22} UCC, Section 9-326 (3). Cf. In re Galt, 120 Fed. 64 (C.A. 7th, 1903).

\textsuperscript{23} UCC, Sections 2-403 (2) and 1-201 (9). Cf. USA, § 23–25.
In pursuance of the same policy, the Code also provides that a voidable title passes when goods are delivered under a transaction of purchase even though the transferor was deceived as to the identity of the purchaser—abolishing distinctions in the common law as to the manner in which the impostor effects the deception; even though the delivery was procured through fraud punishable as larcenous under the criminal law; and even though the delivery was in exchange for a check which is later dishonored or in pursuance of a transaction agreed to be a “cash sale”—points as to which cases in Illinois have been in some conflict.\(^\text{24}\) One acquiring a voidable title may, of course, pass good title to a good faith purchaser for value.

**Performance and breach**

An innovation in the Code is the provision imposing an obligation on each party that the other's expectation of receiving due performance shall not be impaired, authorizing either party when reasonable grounds for insecurity arise to demand from the other adequate assurance of performance, and constituting his failure to respond thereto within thirty days repudiation of the contract.\(^\text{25}\) This is much broader than the seller's right under existing law to suspend performance on the buyer's insolvency.\(^\text{26}\) The seller's right of stoppage in transit is broadened, too, and in addition, as to goods delivered on credit when the buyer is insolvent, the seller is given a right of reclamation on demand made within ten days of delivery without being required to establish fraud.\(^\text{27}\) In return, the buyer is given a similar right as to goods in seller's possession if the seller becomes insolvent within ten days after receipt of the first installment on the price.\(^\text{28}\) Whether these provisions could be given effect in the event of bankruptcy proceedings is a matter of some doubt.\(^\text{29}\)

Unless precluded by a provision for cash against documents, inspection is expressly permitted before payment on arrival of the goods, rather than at the time and place of technical delivery, a result

\(^{24}\) UCC, Section 2-403 (1).

\(^{25}\) UCC, Section 2-609.

\(^{26}\) USA §§ 53, 54 and 57.

\(^{27}\) UCC, Sections 2-705 and 2-702.

\(^{28}\) UCC, Section 2-502.

obtainable under present law by resorting to proof of custom.\textsuperscript{30} While the buyer may still reject the whole of the goods for a defect of any part, the Code permits him to reject, or revoke acceptance of, any commercial unit or units, even though the contract is not severable by common law tests.\textsuperscript{31} Warranties and the manner of their disclaimer are dealt with at some length, but the principal changes in the law are the deletion of any need to show reliance on an express warranty and the imposition of an implied warranty of fitness for a particular purpose even as to goods sold under patent or trade names, if the buyer relies on the seller's skill or judgment to select or furnish suitable goods.\textsuperscript{32}

*Formalities and general provisions*

Considerable changes are made in the provisions superseding the Statute of Frauds presently applicable to sales. A rather flexible concept of "authentication" is substituted for the requirement of a signature; a memorandum is not insufficient because it omits or incorrectly states a term, but is enforceable only for the quantity stated; between merchants, a confirmation sufficient against the sender may bind the recipient if he fails to object within ten days; and part performance is effective only as to the amount of money paid or the quantity of goods accepted.\textsuperscript{33} These changes seem well calculated to reduce abuses of the Statute of Frauds.

The predilections of business men rather than of lawyers are served by the recognition of contract clauses authorizing unilateral price fixing by either buyer or seller in good faith and of executory contracts which neither set the price nor specify standards for determining it.\textsuperscript{34} In such cases, in the absence of further agreement, the price is to be one that is reasonable at the time of delivery.\textsuperscript{35} In similar vein, an offer by a merchant may be made irrevocable for a reasonable time, not to exceed three months, without consideration.\textsuperscript{36} Finally, subject to certain limitations, an acceptance by a merchant may be effective to form a contract even though it contains terms additional to or different from those of the offer.\textsuperscript{37}

\textsuperscript{30} UCC, Section 2-513. Cf. USA, § 47.
\textsuperscript{31} UCC, Sections 2-601 and 2-608.
\textsuperscript{32} UCC, Sections 2-313 and 2-315. Cf. USA, §§ 12 and 15.
\textsuperscript{33} UCC, Sections 2-201 and 1-201 (39). Cf. USA, § 4.
\textsuperscript{34} UCC, Section 2-305.
\textsuperscript{35} Ibid.
\textsuperscript{36} UCC, Section 2-205.
\textsuperscript{37} UCC, Section 2-207.
Courts are authorized to refuse to enforce unconscionable contracts or clauses thereof, without the necessity of finding them contrary to traditional concepts of public policy.\textsuperscript{38} Forfeiture of payments made by a repudiating buyer is limited to twenty per cent of the value of his total performance or $500, whichever is smaller, unless the seller shows actual damages in a greater amount.\textsuperscript{39} The statute of limitations is reduced to a maximum of four years, without distinction between oral and written contracts, and the parties may in the original agreement reduce the period of limitation to not less than one year.\textsuperscript{40}

**ARTICLE 3. COMMERCIAL PAPER**

The greatest change over the NIL is the removal of promissory investment securities from the provisions governing bills and notes.\textsuperscript{41} The definition of investment securities and the major consequences of this change will be dealt with in the discussion of Article 8 of the Code.

Changes as to the requisites of negotiability are for the most part minor. Express recognition of the propriety of stating in a note that it is secured by a mortgage is consistent with the general law of negotiable instruments in Illinois,\textsuperscript{42} but may be in conflict with our special statutory requirement that notes secured by a chattel mortgage of a non-corporate maker must bear a legend stating that they are so secured and then will remain, even after negotiation, subject to defenses good against the original payee.\textsuperscript{43}

Instruments payable only on the happening of an event certain to occur, such as death, but uncertain as to time, will no longer be negotiable.\textsuperscript{44} Any acceleration clause will be consistent with negotiability, but the holder’s option, if not otherwise conditioned, may be exercised only if he in good faith believes that the prospect of payment is impaired.\textsuperscript{45} This probably represents no change in the law of this State.\textsuperscript{46}

\textsuperscript{38} UCC, Section 2-302. \textsuperscript{39} UCC, Section 2-718.
\textsuperscript{40} UCC, Section 2-725.
\textsuperscript{41} UCC, Section 3-103 (1).
\textsuperscript{42} UCC, Sections 3-105 (1) (e) and 3-304 (4) (b).
\textsuperscript{43} Ill. Rev. Stats. (1957) c. 95, § 26.
\textsuperscript{44} UCC, Section 3-109 (2). Cf. INIL, § 4(3).
\textsuperscript{45} UCC, Sections 3-109 (i) (c) and 1-208.
Contrary to Illinois law, a clause authorizing confession of judgment before the instrument is due would impair negotiability. The Code resolves in favor of negotiability conflicting authorities regarding the effect of provisions for fluctuating interest rates and discounts. Illinois decisions on these matters seem to be lacking.

With respect to the question as to whether an instrument payable at a bank should be treated as an order upon the bank to pay it, the Code preserves to the several States the same option which Illinois exercised by omitting Section 87 of the Uniform NIL.

Changes in the law of indorsements are few, but important. A special indorsement is to control the further negotiation even of paper originally payable to bearer. The Code conforms to Illinois law, but not to the Uniform NIL, in permitting a restrictive indorsee, at least one taking for the benefit of a third party, to enjoy as against prior parties the rights of a holder in due course. With respect to the liability or immunity of a transferee from a fiduciary breaching his trust, the Code conforms to the Uniform Fiduciaries Act, which favors the transferee in good faith, rather than to the NIL, which even in its Illinois version favors the defrauded beneficiary. Thus a perplexing conflict between two Illinois statutes would be eliminated.

The requisites and effect of giving notice of a claim or defense have already been pointed out in the discussion of the definitions contained in Article 1 of the Code. With this exception, the only significant change in the concept of a holder in due course is the exclusion of holders acquiring the instrument as part of a bulk transaction not in the regular course of the transferor’s business. The rights of a holder in due course are substantially unchanged, except that non-delivery of an incomplete instrument will no longer be a real defense.

The Code relaxes the concept of payment in due course and, with minor qualifications, permits discharge of liability by payment even with knowledge of an adverse claim, unless the claimant supplies ade-

47 UCC, Section 3-112 (i) (d). Cf. INIL, § 5 (2).
48 UCC, Section 3-106.
49 UCC, Section 3-121.
50 UCC, Section 3-204 (1). Cf. INIL, §§ 9 (5) and 40.
51 UCC, Section 3-206 and INIL, § 37.
52 UCC, Section 3-206 (4); UFA, § 4; and INIL, § 37.
53 UCC, Sections 1-201 (25)–(27) and 3-304.
54 UCC, Section 3-302 (3) (c).
55 UCC, Sections 3-115 (2); 3-407; 3-305. Cf. INIL, § 15.
quate indemnity or obtains an injunction against payment in an action to which the holder is a party. The Code expressly gives effect to suretyship rights and defenses of primary as well as secondary parties to negotiable instruments, insofar as the holder knows of the suretyship relation. This may clarify, but probably does not change existing law.

Without making any substantial change, the Code seeks to clarify the rules governing the liability of agents and other fiduciaries who sign negotiable instruments without expressing the representative capacity in which they are acting, or without identifying their principal, or, though the instrument is in form that of the principal, without power to bind the principal. Since the Illinois cases are in conflict with each other, particularly on the circumstances under which parol evidence is admissible, and some of them seem to be contrary to the NIL, the Code should be helpful in this area. It lays down precise rules applicable to instruments in the hands of subsequent parties and defines the circumstances under which parol evidence may be admitted in suits between the immediate parties. An unauthorized signature, including a forgery, operates as the signature of the unauthorized signer, even though his name may not appear, a convenience to the aggrieved party. As under Illinois law, however, even a forgery may be ratified.

The Code follows Illinois law, rather than the Uniform NIL, in throwing the loss on the drawer rather than the drawee bank in cases in which an employee of the drawer supplies to authorized signers, themselves innocent of fraud, a fictitious or spurious name as payee. Instead of treating the instrument as bearer paper, however, the Code provides that indorsement by any person is sufficient. With respect to impostors, the common law distinction between those who appear in person to effect the deception and those who merely use the mails is abolished, the loss falling on the drawer rather than the drawee in both instances.

56 UCC, Section 3-603. Cf. INIL, § 87. 57 UCC, Section 3-606.
58 UCC, Sections 3-401 through 3-404.
60 UCC, Section 3-404 (1).
62 UCC, Section 3-405. Cf. INIL, § 9(3).
63 Ibid.
A change in the law is the requirement that acceptance be executed on the instrument, with the result that a telegram which may now constitute an extrinsic acceptance would be merely an executory agreement to accept. However, by reason of the separate Article on Letters of Credit, hereinafter discussed, the law on virtual acceptances is not substantially changed.

Warranties on transfer and negotiation are not substantially changed, and while provision is made for warranties on presentment for acceptance or payment, the liabilities of a presenter are not materially enlarged, in view of the case law defining the circumstances under which the drawee may recover payments made under mistake of fact.

The provisions dealing with the time within which presentment must be made are simplified, and in determining the liability of indorsers will be measured from the date of the respective indorsement. For checks thirty days will be timely as to drawers and seven days as to the respective indorsers. Failure of timely presentment or of notice of dishonor will discharge a drawer, whether of a check or other bill, only to the extent of his damage, and he must assign to the holder his rights against the insolvent drawee. Protest will be necessary only as to a bill showing on its face that it is drawn or payable outside of the United States and its territories.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS

Generally speaking, the Code re-enacts, with some elaboration to conform to Federal Reserve regulations and accepted banking practices, the Bank Collection Code of the American Bankers Association. As mentioned above, that statute was once in force in Illinois, but following the determination by the United States Supreme Court that its provisions giving depositors a priority under certain circumstances in the assets of an insolvent bank could not, by reason of conflict with federal law, be applied to national banks, the Illinois Supreme Court

64 UCC, Section 3-410. Cf. INIL, § 133.
65 UCC, Section 5-114. Cf. INIL, § 134.
66 UCC, Section 3-417. Cf. INIL, §§ 65 and 66.
67 UCC, Section 3-503.
68 UCC, Sections 3-501 and 502.
69 UCC, Section 3-501 (3). Cf. INIL, §§ 128 and 151.
declared the entire collection code inoperative.\textsuperscript{71} Since that time the banks have sought to obtain the benefit of as many as possible of its provisions by contracts expressed in passbooks and on deposit slips.

Article 4 of the Uniform Commercial Code provides that, unless a contrary intent clearly appears, a depositary bank takes an item as agent for collection, rather than as purchaser, regardless of the form of indorsement,\textsuperscript{72} and each successive forwarding and collecting bank becomes in turn the agent of the owner, rather than of the depositary bank, in accordance with the Massachusetts rule.\textsuperscript{73} Items may be presented by mail to the drawee bank.\textsuperscript{74} Warranties on presentment, with minor qualifications, have the effect of guaranteeing all prior indorsements.\textsuperscript{75} Banks are given a security interest in items for which credit is given, if withdrawn or available for withdrawal as a matter of right, and to the extent of such interest may qualify as holders in due course.\textsuperscript{76}

Payment of an item by the drawee becomes final on the earliest of the following events: payment in cash, completion of posting to the account of the drawer, settlement by credit without reserving the right to revoke the settlement, or failure to revoke provisional settlement within the time permitted.\textsuperscript{77} The media and effect of permitted forms of remittance and settlement are specified, and the point at which settlement on the part of each bank in the chain becomes final is made definite.\textsuperscript{78} These clarifications of law to conform to banking practice should be beneficial to all persons. The policy of "deferred posting" presently permitted by statute is continued.\textsuperscript{79}

The drawer's unqualified right to stop payment is preserved, but an oral order is binding for only fourteen days, and a written order for only six months unless renewed in writing.\textsuperscript{80} A bank paying in violation of the order is subrogated to the rights, if any, of the holder.\textsuperscript{81}

\textsuperscript{71} Authority cited note 4, supra.
\textsuperscript{72} UCC, Section 4-201.
\textsuperscript{73} UCC, Section 4-202 (3).
\textsuperscript{74} UCC, Section 4-204.
\textsuperscript{75} UCC, Section 4-207.
\textsuperscript{76} UCC, Sections 4-208 and 209.
\textsuperscript{77} UCC, Section 4-213 (1).
\textsuperscript{78} UCC, Sections 4-211 and 213.
\textsuperscript{79} UCC, Section 4-301. Cf. INIL, § 185a.
\textsuperscript{80} UCC, Section 4-403.
\textsuperscript{81} UCC, Section 4-407.
Drawers must exercise reasonable care to examine the statement and report unauthorized signatures and alterations. In the event of the drawer’s default in this duty, if the report is made within a year of the time the statement becomes available, the bank may still be liable if the drawer establishes a lack of ordinary care on its part; after one year recovery is barred without regard to negligence on the part of drawer or drawee bank, an improvement over the existing statute. 82

A bank’s authority to accept, pay or collect an item is not rendered ineffective by incompetence until adjudication and knowledge thereof by the bank, or by death until the bank has knowledge of it. Even with knowledge the bank may for ten days after death pay or certify checks unless ordered to stop payment by a person claiming an interest in the account. 83 The object of this latter provision is to reduce the necessity of filing routine claims in probate, but not to determine rights as between the recipient and the decedent’s estate.

Finally, the Code reinstates the provisions regarding preferred claims against insolvent banks formerly contained in Section 13 of the Bank Collection Code. Briefly stated, if a drawee bank finally pays an item and becomes insolvent or is closed by public authority before making settlement therefor, or if a collecting bank receives final settlement for an item and becomes insolvent or is closed by public authority before making settlement therefor, the owner of the item is given a preferred claim against the assets of the insolvent or closed bank. 84 Admittedly, amendment of the National Bank Act would be necessary before these provisions could be applicable to national banks, 85 but the severability section of the Code should permit their application to state banks. 86 The writer has not reached a conclusion as to their desirability.

The Code provisions on bank deposits and collections have been criticized with particular severity as a “sell-out” to the bankers. 87 On the whole, however, they merely give legal approval and sanction to banking practices presently supported by contract and by custom.

83 UCC, Section 4-405.
84 UCC, Section 4-214.
85 Authority cited note 70, supra.
86 UCC, Section 1-108. Cf. authority cited note 4, supra.
ARTICLE 5. LETTERS OF CREDIT

Except for the provision of the UCC recognizing virtual acceptances, \(^{88}\) letters of credit have been governed by the common law and the law merchant. \(^{88}\) The Code undertakes to clarify the distinctions between revocable and irrevocable and between notation and non-notation credits, and generally to codify the better law that has been developed on the subject. With the exception of the provision attempting to give priority against the assets of an insolvent bank to the owner or beneficiary of the credit, \(^{90}\) this Article of the Code should be effective and helpful in the financial transactions to which it relates.

ARTICLE 6. BULK TRANSFERS

The transactions covered and the creditors protected by this Article are substantially the same as under the existing Illinois statute, except that under the Code an auctioneer must give notice to the creditors and may incur personal liability to the extent of unpaid debts, but not exceeding the net proceeds of the sale, in the event of his failure to do so. \(^{91}\)

The Code requires the notice to creditors in bulk sales to state whether all debts are to be paid in full as they fall due, and if the transferee is in doubt on that point, to state the estimated total of the transferor's debts and the address where the schedule of property and list of creditors may be inspected—a distinct improvement over our statute. \(^{92}\)

An important provision, the inclusion of which is left to the option of each State, is one requiring the transferee in a bulk sale otherwise than by auction to see to the application of the proceeds to the debts listed on the schedule. Such a provision, even now sometimes stipulated for by contract, puts real teeth into bulk sales legislation. \(^{93}\)

In the event of failure to comply with requirements, the Code seems merely to render the transferee's title defective, whereas the Illinois statute seems to add the personal liability of the transferee. \(^{94}\)

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\(^{88}\) UCC, Section 5-117.

\(^{89}\) See Finkelstein, Commercial Letters of Credit (1930).

\(^{90}\) INIL, § 134.

\(^{91}\) UCC, Section 6-102, 103 and 108. Cf. Ill. Rev. Stats. (1957) c. 121 ½, §§ 78 and 80.


\(^{93}\) UCC, Section 6-106.

The Code limits actions and levies under this Article to a period of six months after the taking of possession by the transferee, unless the transfer is concealed. There is no corresponding limitation in Illinois.

**ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE**

The Code makes the warehouse receipt as fully negotiable as the bill of lading—anyone in possession of a bearer receipt or of an order receipt indorsed in blank has power to negotiate it. In some States, but not in Illinois, this has already been accomplished by amendment of the Uniform Sales Act and the Uniform Warehouse Receipts Act.

Another important change affecting negotiable bills of lading and negotiable warehouse receipts is the requirement of due negotiation, defined as a negotiation in the regular course of business or financing and not in settlement or payment of a money obligation. Moreover, the definitions of notice and notification discussed in connection with Article 1 of the Code further limit the holders entitled to benefit from the negotiability of the document. On the other hand, the power of disposition conferred by the Sales Article on a merchant to whom goods are entrusted will enable documents of title, though wrongfully obtained, to defeat prior claims of ownership under circumstances in which that would not be the case under present law.

All other changes are relatively minor. Express authority is given for including in the document reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment or shipment. A buyer in the ordinary course of business of fungible goods, sold and delivered by a warehouseman who is also in the business of buying and selling such goods, takes free of any claim under a warehouse receipt. The procedure for foreclosure of the lien of the warehouseman or carrier is simplified. The rights of the several parties in the event of diversion or reconsignment of goods

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95 UCC, Section 6-111.
96 UCC, Section 7-501 (1) and (2); USA, §§ 32 and 38; UWRA, §§ 40 and 47. Cf. UBLA, §§ 31 and 38.
97 UCC, Section 7-501 (4).
98 UCC, Sections 7-503 (1) and 2-403 (2).
99 UCC, Sections 7-204 (3) and 309 (3).
100 UCC, Section 7-205.
101 UCC, Sections 7-210 and 308. Cf. UWRA, § 33.
while in transit are made explicit. Recognition is given to the practice of issuing bills of lading at destination when shipment is by air, and to the practice of posting security without obtaining an order of court for delivery of the goods when the negotiable document of title has been lost, stolen or destroyed.

**ARTICLE 8. INVESTMENT SECURITIES**

The Code defines an investment security as an instrument in bearer or registered form of a type commonly recognized as a medium for investment, issued as one of a class or series or by its terms divisible into a class or series of instruments, and evidencing a share, participation or other interest in property or an enterprise, or evidencing an obligation of the issuer. Any instrument coming within this definition is withdrawn from the purview of the Article on Commercial Paper. Securities in bearer form are accorded "full" negotiability as now known under the NIL, and those in registered form are accorded a somewhat greater degree of negotiability, particularly as to defenses of the issuer, than that now known under the Uniform Stock Transfer Act.

The only requisites of negotiability are those contained in the definition. Thus promissory securities are freed of the highly technical requirements as to the unconditional character of the promise, the certainty of the sum, and the certainty of the time of payment. Registered bonds and revenue and income bonds, which apart from statutory provisions relating to specific governmental issues, are presently non-negotiable under the NIL and forced to depend upon estoppel for their currency, will be negotiable. The same will be true of several types of securities which presently are not governed by any statute in Illinois, such as certificates of beneficial interest in business and real estate trusts, voting trust certificates, certificates issued for the deposit of securities in connection with reorganizations, escrow receipts issued in certain types of purchase and sale transactions, scrip certificates issued in lieu of fractional shares, and subscription warrants and rights, provided only that they be in bearer or registered form.

Two years ago the writer published a detailed analysis of an earlier draft of this Article of the Code and concluded that, while legislation

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102 UCC, Sections 7-303 and 504 (3).
103 UCC, Section 7-305.
104 UCC, Section 7-601.
105 UCC, Section 8-102.
of its general scope and purport was needed and would be highly beneficial, technical defects rendered it unsuitable for enactment. Those defects have for the most part been corrected, so that there now should be no serious objection to Article 8. In the meantime the Illinois legislature enacted a statute relating to the transfer of securities to and by fiduciaries and repealing Section 3 of the Uniform Fiduciaries Act. That statute would be superseded by the Code, but its policy to free the issuer, its transfer agent and its registrar from the necessity of determining the propriety of a particular transfer of a security, would be preserved.

There are many other desirable provisions of this Article of the Code besides those already mentioned. The effect of references on the face or back of a security to an indenture or other document is specified; and permitted defenses of an issuer are held to the barest minimum. The warranties of an authenticating trustee, registrar or transfer agent are made explicit, as are also the warranties of a person presenting a security for registration of transfer or for payment or exchange. Unless otherwise agreed, an indorsement is not a guaranty that the security will be honored. A holder whose indorsement is forged has no rights against a purchaser for value without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer, but the issuer must deliver a like security to the true owner unless an over-issue would result, in which case damages are prescribed. Existing law on these matters is incomplete.

The effect of guaranteeing a signature is specified as a warranty that the signature is genuine, that the signer was an appropriate person to indorse, and that he had legal capacity to sign, but there is no warranty of the rightfulness of the particular transfer.

A broker selling a security gives to his customer, to the issuer and to a purchaser the same warranties as a principal seller and has the rights and privileges of a purchaser, but when acting in good faith is

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108 UCC, Section 8-403.
109 UCC, Sections 8-202 and 205.
110 UCC, Section 8-208.
111 UCC, Section 8-306.
112 UCC, Section 8-308.
113 UCC, Sections 8-311, 404 and 104.
114 USTA, §§ 1 and 8.
115 UCC, Sections 8-312 and 308.
not liable for conversion even though his principal may be. Delivery to a purchaser does not occur until a specific security is identified as belonging to him; despite confirmation of purchase and a book entry, the broker is treated as the holder of a security constituting a part of a fungible bulk held for customers. These all are sensible provisions in harmony with usages of the investment market.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER**

The Code's greatest changes over existing law in approach to the problems, and to a somewhat lesser extent in resolution of the problems, are in Article 9. While preserving the distinction between possessory and non-possessory security interests, it abandons, but does not outlaw, the terms now used to classify security interests in personal property: pledge, chattel mortgage, conditional sale contract, deed of trust, bailment lease, consignment, trust receipt and factor's lien; abolishes the present pattern of a distinct body of principles and rules governing each of these different security devices; substitutes the single term "security interest"; and establishes uniform principles and rules based on the functional classification of the type of personal property involved, the purpose for which the borrower is holding it, and the nature of security interest appropriate to the transaction. Distinctions based on location of title are abolished.

Only slight modifications have been made in the draft of this part of the Code since the excellent article in the first volume of this Review. The present writing will be confined to a summary exposition and discussion of the major provisions.

**Inventory**

Goods are classified as inventory when held for sale or lease or to be furnished under contracts of service, or as raw materials, work in process or materials used or consumed in a business. In Illinois at the present time the only security interests in inventory valid against third parties are the trust receipt, which is available only to lending

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116 UCC, Sections 8-306 and 318.
117 UCC, Section 8-313.
118 Comments to UCC, Sections 9-101 and 102; Sections 1-201 (37) and 9-202.
119 Bane, Chattel Security Comes of Age: Article 9 of the Uniform Commercial Code, 1 De Paul L. Rev. 91 (1951).
120 UCC, Section 9-109 (4).
institutions and not to the seller of the goods, and the factor's lien, which is available only for inventory held by a wholesaler.\textsuperscript{123} Provision for a valid security interest available to seller or lender in goods held by a manufacturer, wholesaler or retailer will be a substantial improvement in the law. Moreover, the security interest in inventory prior to its sale in the ordinary course of business will not be impaired by reason of failure to require the debtor to account for proceeds or replace collateral.\textsuperscript{122}

Another obstacle to inventory financing in Illinois is the ineffectiveness against third parties of after-acquired property clauses, except where covered by the factor's lien on a wholesaler's inventory.\textsuperscript{123} Whether the attempt by definition to prevent the lien on after-acquired property from being treated as given on account of an antecedent debt will stand up in bankruptcy proceedings is doubtful, particularly if anything more than a substitution of collateral is involved.\textsuperscript{124}

Filing with respect to a security interest in inventory will be in a central State office, as at present under the Uniform Trust Receipts Act, and also in the county of debtor's residence in the event of adoption of an optional provision; and buyers of goods in the ordinary course of business will not be affected thereby.\textsuperscript{125} A security interest in farm products, however, will be good against buyers.\textsuperscript{126}

A security interest in inventory will attach to proceeds and be valid against third parties if the original or a subsequent filing mentioned proceeds. Purchasers in the ordinary course of their business of chattel paper or non-negotiable instruments will, however, prevail over the claimant of proceeds despite the filing. The same is true of holders in due course of negotiable instruments and documents, just as under the Uniform Trust Receipts Act.\textsuperscript{127} In the event of the borrower's insolvency, a priority in non-identifiable cash proceeds, limited to

\begin{itemize}
\item \textsuperscript{122} UCC, Section 9-205.
\item \textsuperscript{123} UCC, Section 9-204. Cf. In re Danville Hotel Co., 33 F. 2d 162 (E.D. Ill., 1929).
\item \textsuperscript{125} UCC, Sections 9-401 and 307 (1). Cf. UTRA, §§ 13 and 9 (2) (a).
\item \textsuperscript{126} UCC, Section 9-307 (1).
\item \textsuperscript{127} UCC, Sections 9-306, 308 and 309. Cf. UTRA §§ 9 (3), 10 and 9 (1) (a).
\end{itemize}
the amount received within ten days prior to the institution of insolvency proceedings, is given the holder of the security interest, but "tracing" of cash proceeds commingled with other funds or deposits is not permitted.\(^\text{128}\)

Financing by assignment of accounts receivable, as distinguished from giving a security interest in the inventory itself, will, for validity against third persons, require a filing in a central State office (and under a provision left to State option, in the county of the debtor's place of business).\(^\text{129}\) This will be a beneficial change in Illinois law, since no filing whatever seems to be required as to assignment of accounts receivable unless incident to obtaining a factor's lien on a wholesaler's inventory. Any doubt as to whether the policing requirements of *Benedict v. Ratner* are applicable will under the Code be resolved in the negative.\(^\text{130}\)

**Equipment**

Goods are classified as equipment when used or bought for use primarily in business, including farming, a profession and activities of not-for-profit organizations and governmental subdivisions or agencies.\(^\text{181}\) Filing will be in a central State office (and also in the county of the debtor's residence if an optional provision is adopted). With respect to equipment which is to become a fixture, the filing must be in the office where a mortgage on the real estate concerned would be filed or recorded.\(^\text{132}\) Provision for such filing is a useful improvement in Illinois law.\(^\text{133}\)

A purchase money security interest in farm equipment having an original purchase price not in excess of $2,500 need not be filed in order to have validity against creditors of the buyer and purchasers from him other than those purchasing for use in their own farming operations. By definition, a lender as well as a seller may hold a purchase money security interest.\(^\text{134}\)

With the exception of the foregoing and the effectiveness of after-

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\(^{129}\) UCC, Section 9-401 (1).


\(^{131}\) UCC, Section 9-109 (2).

\(^{132}\) UCC, Section 9-401 (1).

\(^{133}\) See Sword v. Low, 122 Ill. 487, 13 N.E. 826 (1887).

\(^{134}\) UCC, Section 9-302 (1) (c); 307 (2); 107.
acquired property clauses, discussed above in connection with security interests in inventory, the only significant changes in the law in respect of security interests in equipment relate to the rights of the immediate parties. The distinction between conditional sale contracts and chattel mortgages being abolished, the buyer on credit will under all circumstances be protected against forfeiture, be entitled to any surplus on resale after default, and will have a right of redemption.\textsuperscript{136} Since even the limited protection of the Illinois Retail Installment Sales Act is not available to buyers of equipment for use in business,\textsuperscript{138} these provisions constitute a considerable change, and certainly a distinct improvement, in the law.

\textit{Consumer goods}

Goods are classified as "consumer goods" when used or bought for use primarily for personal, family or household purposes.\textsuperscript{137} As under the law of conditional sale contracts in Illinois today, a purchase money security interest in consumer goods other than fixtures need not be filed for protection against creditors, but, contrary to present law, in the absence of filing subsequent buyers for their own personal, family or household purposes will prevail over the security interest.\textsuperscript{138} Filing of any security interest in consumer goods will be in a central State office, in the county of the debtor's residence or both, depending on the alternative provision adopted in Illinois.\textsuperscript{139}

The protection afforded the debtor, discussed above in connection with security interests in equipment, will be of real benefit to buyers and borrowers in Illinois, for even the Retail Installment Sales Act does not prevent forfeiture of payments as well as the goods if the seller is willing to waive any unpaid balance of the price, nor does it require a resale of goods after default and repossession.\textsuperscript{140} Under the Code there is a right of redemption, and resale is required if the debtor at the time of default has paid sixty per cent of the price or loan, and in any other case if the debtor objects in writing within thirty days of receipt of written notice of the seller or lender's proposal to retain the goods in satisfaction of the obligation.\textsuperscript{141}

\textsuperscript{136} UCC, Sections 9-504, 505 and 506.
\textsuperscript{138} Ill. Rev. Stats. (1957) c. 121, § 223.
\textsuperscript{137} UCC, Section 9-109 (1).
\textsuperscript{138} UCC, Sections 9-302 (1) (d) and 307 (2).
\textsuperscript{139} UCC, Section 9-401 (1).
\textsuperscript{140} Ill. Rev. Stats. (1957) c. 121½, § 249.
\textsuperscript{141} UCC, Section 9-506 and 505.
Other provisions

In harmony with the common law of pledge, a security interest is perfected against all persons by taking possession of the collateral. As under the Uniform Trust Receipts Act, a security interest in negotiable instruments and documents (and goods represented thereby), given for new value under a written agreement, is perfected against creditors for a temporary period without possession or filing, but the period is reduced from thirty to twenty-one days to conform to the Bankruptcy Act.

The Code contains detailed provisions dealing with priorities among conflicting security interests, whether arising solely under the Code, out of transactions respecting real estate to which a chattel may be affixed, from the accession of one chattel to another, or from statutes or principles of common law recognizing liens of artisans and others. The rules laid down in these provisions are sensible and workable and have the further advantage of reducing uncertainties which plague existing law.

Finally, the Code specifies reasonably detailed rules governing the conflict of laws in multi-state transactions. Though their application in some instances may appear doubtful, here, too, uncertainty in the law should be reduced. With respect to chattels already subject to a security interest at the time brought into the State, the Code provisions are substantially the same as those of the new Illinois Motor Vehicle Law.

ARTICLE 10. EFFECTIVE DATE AND REPEALER

Statutes to be superseded and repealed were enumerated above in the introductory part of this paper. Usury laws and the Small Loans Act will not be affected. Some parts of the Retail Installment Sales Act will be in conflict and should be amended to conform.

142 UCC, Section 9-305.
143 UCC, Sections 9-304 and 309; UTRA, § 8; Bankruptcy Act, § 60 (a) (7).
For reasons which by this time should be apparent, the effective date should be postponed for at least six months after the close of the legislative session at which the Code is adopted.

CONCLUSION

A pamphlet recently published by the National Conference of Commissioners on Uniform State Laws, entitled Why your State Should Enact the revised Uniform Commercial Code, contains reprints of an article by a Pennsylvania lawyer documenting widespread satisfaction with the functioning of the Code in that State, an article by a Massachusetts lawyer, an article by the Director of Research of the Kentucky Legislative Research Commission, and excerpts from the Report of the Massachusetts Recess Commission on the Code dated June 17, 1958. A persuasive case is made for adoption of the Code.

Considerations leading the present writer to his conclusion that the Code should be enacted in Illinois are as follows: (1) it effects substantial improvements in existing law summarized above, beneficial to consumers as well as to diverse interests of the business and financial community; (2) it will contribute greatly to the certainty of the law, and this despite problems inherent in any such far-reaching changes in terminology, form and substance; (3) it will make it possible, though not easy, for educated laymen familiar with the business transactions with which they are concerned, to comply with its provisions, under general supervision of their attorneys; and (4) it will enable lawyers to serve their clients more efficiently, economically and effectively than is possible under the miscellaneous, piece-meal statutes and decisional law to be superseded.

It is recommended that members of the Bar study the Code, as students in some law schools have been doing for several years, and consider the desirability of its adoption from the standpoint of their clients' interests, efficiency in the administration of justice, and the general public interest.