Report to the Colorado General Assembly:

UNIFORM COMMERCIAL CODE

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 90

NOVEMBER 1964

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OF THE

COLORADO GENERAL ASSEMBLY

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UNIFORM COMMERCIAL CODE

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER 2, COLORADO
222-9911—EXTENSION 2285

November 24, 1964

To Members of the Forty-fifth Colorado General Assembly:

In accordance with the provisions of House Joint Resolution No. 1030, 1964 regular session, the Legislative Council submits the accompanying report and recommendations relating to a uniform commercial code for Colorado.

This report and recommendations were approved by the Council at its meeting on November 23, 1964, for transmission to the members of the Forty-fifth General Assembly.

Respectfully submitted,

C. P. (Doc) Lamb,
Chairman

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER 2, COLORADO
222-9911—EXTENSION 2285

November 4, 1964

Representative C. P. Lamb, Chairman
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado

Dear Mr. Chairman:

Your committee appointed to review the uniform commercial code has completed its assignment and submits the accompanying final report and recommendations thereon.

The committee has reviewed the draft of the proposed uniform commercial code which has been prepared by the Uniform Commercial Code Committee of the Colorado Bar Association. The members of your committee were not only impressed with the presentation made of the code, but we were even more impressed with the amount of work which had gone into its preparation. We would therefore like to take this opportunity to express our gratitude to Mr. David J. Clarke, chairman of the bar association's committee, and to the numerous members of his committee.

As may be noted in the accompanying report of committee findings and recommendations, your committee recommends the favorable consideration of the proposed code in the 1965 session. Care should be taken, however, to retain its uniformity with the codes of other states and, if adopted, the code should be located in one chapter of our revised statutes.

Respectfully submitted,

John W. Nichols, Chairman
Committee on Uniform
Commercial Code

FOREWORD

The Legislative Council's Committee on Uniform Commercial Code was created under the provisions of House Joint Resolution No. 1030, 1964 regular session, with the understanding that it would essentially be a legislative committee which would review the work of the Colorado Bar Association's Committee on Uniform Commercial Code. Appointed to the Legislative Council committee were Representative John W. Nichols, chairman; Senator Carl W. Fulghum, vice chairman; Senators Donald Kelley, Ranger Rogers, and Joe Shoemaker; and Representatives Lowell B. Compton, T. H. Dameron, William Griffith, Frank Kemp, Ben Klein, Vincent Massari, and Joseph Schieffelin. Representative C. P. Lamb, chairman of the Legislative Council, also served as an ex officio member of the committee.

The results of the work of the bar association's committee were provided the members of the Legislative Council committee early in October. These materials included the draft of the proposed uniform commercial code for Colorado and related information on its contents, and the procedures which had been followed in preparing this draft. As a result of a two-day meeting with representatives of the bar association's committee and other interested persons, our committee concluded that the proposed draft should be recommended for favorable consideration in the 1965 session.

This publication includes the report of the Legislative Council committee on this proposal, together with accompanying explanatory materials on the uniform commercial code; however, the proposed draft of the code has not been included because of its size. The Colorado Bar Association has a limited supply of these drafts, and its Uniform Commercial Code Committee will provide these to interested persons and groups, as well as speakers to discuss the provisions of this code. All members of the Forty-fifth General Assembly will be provided with drafts of the code in advance of the 1965 session.

Assisting the Legislative Council's committee were James C. Wilson, Jr., assistant attorney general assigned to the Legislative Reference Office, and Phillip E. Jones, senior research analyst.

November 4, 1964

Lyle C. Kyle
Director

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UNIFORM COMMERCIAL CODE COMMITTEE REPORT

Under the provisions of House Joint Resolution No. 1030, 1964 regular session, the Legislative Council was given discretionary authority to appoint a committee to review the proposed uniform commercial code being prepared by the Colorado Bar Association. On the assumption that the bar association would complete its work on a draft of the code, the Council appointed its committee following adjournment of the 1964 session.

Committee Procedures

Members of the Council committee met with members of the Uniform Commercial Code Committee of the Colorado Bar Association on May 2nd, 1964, to review the study and drafting procedures which had been worked out by the bar association committee and to hear a discussion on the uniform commercial code by a member of the New Mexico Uniform State Laws Commission. The bar association committee reported that the annotation work necessary for its review of the uniform commercial code was being carried out by students of the Denver University School of Law. When this material became available, the work on the draft itself would be conducted by subcommittees assigned various of the ten articles of the code. (Appendix D contains a list of the members of the bar association who worked on this project.)

The bar association committee reported that its completed draft would be submitted to the association's Board of Governors and, if approved, would be submitted to the Legislative Council committee for consideration early in the fall.

The Legislative Council committee met on October 22nd and 23rd to review the bar association committee's proposed draft of a uniform commercial code for Colorado and to provide an opportunity for interested persons ond organizations to present their views to the committee on this draft. Much of these two days was devoted to comparing the proposed draft with present Colorado law and to discussing technical and procedural problems involved with the adoption of such a code in Colorado. Few persons, other than those attorneys who had worked on the code, appeared to discuss the proposed code with the committee.

Committee Findings

The uniform commercial code is the result of more than 20 years of intensive study, drafting, and refining by its sponsors -- the National Conference of Commissioners on Uniform State Laws and the American Law Institute in collaboration with a number of committees of the American Bar Association and other interested groups and trade organizations. Additional study and consideration has been given this code by the 29 states and the District of Columbia that have adopted it. These 29 states, which include Colorado's neighboring states of New Mexico, Oklahoma, Nebraska, and Wyoming, are listed in the following tabulation in the order in which they adopted the code:

State	Adoption Date	Effective Date
Pennsylvania	1953	July 1, 1954
Massachusetts	1957	October 1, 1958
Kentucky	1958	July 1, 1960
Connecticut	1959	October 1, 1961
New Hampshire	1959	July 1, 1961
Rhode Island	1960	January 2, 1962
Wyoming	1961	January 2, 1962
Arkansas	1961	January 1, 1962
New Mexico	1961	January 1, 1962
Ohio	1961	July 1, 1962
Oregon	1961	September 1, 1963
Oklahoma	1961	January 1, 1963
Illinois	1961	July 2, 1962
New Jersey	1961	January 1, 1963
Georgia	1962	January 1, 1964
Alaska	1962	January 1, 1963
New York	1962	September 27, 1964
Michigan	1962	January 1, 1964
Indiana	1963	July 1, 1964
Tennessee	1963	July 1, 1964
West Virginia	1963	July 1, 1964
Montana	1963	January 2, 1965
Maryland	1963	February 1, 1964
California	1963	January 1, 1965
Wisconsin	1963	July 1, 1965
Maine	1963	December 31, 1964
Nebraska	1963	September 2, 1965
Missouri	1963	July 1, 1965
District of Columbia	1963	January 1, 1965
Virginia	1964	January 1, 1966

Appendix A contains a report prepared by the bar association committee on the background and provisions of the uniform commercial code. This report notes that the code consolidates in one enactment and brings up to date and makes more certain present statutory commercial law in areas now covered by eitht old uniform acts, five of which have been adopted in Colorado, and also a variety of other non-uniform commercial statutes. Because of easier and more rapid communication and transportation in this nation, and because industrial empires have grown and become more decentralized and scattered in the process, without regard to state lines, the need and demand for uniformity in commercial law and dealings has become more pronounced. The uniform commercial code has been prepared as an answer to this demand.

There are a number of other reasons which have been considered as to why the uniform commercial code should be adopted in Colorado. Colorado's present commercial statutory laws are outmoded and are not

in keeping with modern commercial practices, and a revision thereof would be highly desirable. These present statutes also are extremely uncertain in many respects because of inconsistencies in the law itself or because of inconsistent interpretations thereof, as well as having areas where there is no statutory coverage whatsoever in this state.

Perhaps the overriding reason for the enactment of the code is the fact that it has been adopted in so many states, including such highly industrialized and commercial states as Connecticut, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, and Pennsylvania, and the commercial transactions between business and financial institutions in these and the other 21 states and similar institutions in Colorado would be greatly facilitated and enhanced if Colorado were to adopt the uniform commercial code. In this connection, one of the persons appearing before the Council committee stated that insurance companies as well as banks are more willing to make loans in states having the uniform commercial code.

The comparison of the proposed uniform commercial code provisions with present Colorado law, included in Appendix B, was reviewed at length by members of the Council committee with representatives of the bar association subcommittees which had worked on these provisions. Because of the lack of time, the committee did not review the proposed draft of the code section by section with these representatives; however, the committee concluded that because of the highly-technical nature of the substantive provisions in the code, such a review would be of little value. Further, the committee felt that the work that had been done by members of the bar association on the proposed code in effect represented the same services which normally would be provided by the committee's staff, and that the committee members must place their faith in the work which the attorneys had done, much the same as they do with the work of their own staff.

During the article-by-article comparison with present Colorado law, the need for uniformity with code provisions in other states was stressed. In this respect, bar association subcommittees had the advice of the UCC Permanent Editorial Board and before any changes were made in the draft for Colorado, the subcommittees would correspond with this board for their comments. (A file of this correspondence has been kept by the bar association.) Moreover, it was also pointed out that the need for uniformity applies to section numbers as well as language within the code. (Appendix E includes an article which treats this need for uniformity in some detail.)

As a result of this comparison, the committee found that the code draft had been exhaustively researched by the bar association committee members, as well as by others, and that its provisions had already been reviewed by some commercial groups. The Colorado Bankers' Association, for example, had adopted a resolution in support of the adoption of the uniform commercial code by the General Assembly. The bar association committee plans additional exposure of its draft to interested groups and associations between now and the 1965 session.

Committee Recommendations

1. The committee recommends that favorable consideration be given in the 1965 session to the draft of the uniform commercial code prepared by the Uniform Commercial Code Committee of the Colorado Bar Association. The committee believes that no further interim legislative consideration is needed of this draft and that the members of the General Assembly, because of the tremendous size of this proposal and because of its highly technical nature, may agree with this committee that the acceptance of this code will be based, to a large extent, on faith in the abilities and knowledge of those persons who have devoted considerable time to its preparation, not only in Colorado but in the 29 other states in the nation which have adopted this code.

2. The committee recommends that the members of the General Assembly carefully consider any proposed amendments to the code which would change its uniformity. Much of the advantage in adopting this code for Colorado rests with its having uniform provisions governing commercial actions, and hastily-drawn amendments to the proposed code would serve to defeat this purpose, as well as possibly jeopardizing its chances of being enacted. In the interests of uniformity with the code as adopted in other states, the committee suggests that the numbering system for sections as used in Colorado be retained but that the section numbers as contained in the uniform commercial code be included in parentheses following the Colorado section numbers.

3. The committee recommends that, if adopted, the uniform commercial code be maintained as a separate chapter in the Colorado Revised Statutes. The proposed code is a consolidated body of law and should be located in our statutes as such.

4. The committee recommends that the Colorado Bar Association continue to provide as widespread publicity as possible to interested groups and associations on the provisions in the proposed uniform commercial code. Because of its size, this report does not include a copy of the proposed code, but the bar association has a number of prepared copies and it has speakers available for any group or association interested in discussing this proposal.

APPENDIX A

(Prepared by the Uniform Commercial Code Committee of the Colorado Bar Association)

WHAT VERY BRIEFLY IS THE CODE?

The uniform commercial code consolidates in one enactment and brings up to date and makes more certain our present statutory commercial law in areas now covered by eight old uniform acts, five of which were adopted in Colorado, and also by a variety of other non-uniform commercial statutes.

It consists of ten articles. Article 1 contains general provisions and definitions common to the entire code. Article 10 contains the formal effective date and repealer provisions.

Between these two articles are eight other articles, each dealing with a specific and particular phase of commercial activity and substantive commercial law. The concept of the code is that "commercial transactions" is a single subject of the law notwithstanding its many facets.

The basic and essential fact of all commerce, the focal point of all commercial activity, is the sale and purchase of goods. Article 2 entitled "Sales" deals therewith. Payment for the goods sold may be through the medium of a check, note or draft. Article 3 is entitled "Commercial Paper" and covers such instruments. The check, note or draft or other similar paper, may be negotiated and pass through one or more banks for collection. Article 4 entitled "Bank Deposits and Collections" supplements Article 3 in this respect. The sale may be pursuant to a letter of credit and Article 5 deals with and is entitled "Letters of Credit". The sale of the goods may be in ordinary course of business or may possibly be a bulk transfer. Article 6 entitled "Bulk Transfers" covers this type of transaction. Transportation or storage of the goods sold may entail the use of a bill of lading or warehouse receipt or both. Hence Article 7 entitled "Documents of Title" is included to cover such arrangements. Since Article 3 dealing with commercial paper excludes certain defined investment securities, Article 8 entitled "Investment Securities" is included to cover investment paper. The goods, as well as other types of personal property, either in the hands of the seller or the buyer, before, as part of or after sale may serve as collateral for security purposes, and hence the code includes Article 9 entitled "Secured Transactions."

Every phase of commerce involved is but a part of one transaction, namely, the sale of and payment for the goods. The code deals with all the phases which may ordinarily arise in the handling of a commercial transaction, from start to finish.

THE ORIGIN, REASONS THEREFOR, AND DRAFTING OF THE CODE

This code represents more than twenty years of intensive study, drafting and refining by its sponsors, the National Conference of Commissioners on Uniform State Laws and the American Law Institute

in collaboration with a number of committees of the American Bar Association and other interested groups and trade organizations. Over this period of time, thousands of lawyers, law school professors, judges and business men have played a part, some large, some small, in the development of this final product.

The National Conference of Commissioners on Uniform State Laws is a body of three to five lawyers from each state which was originally organized in the 1890's to promote uniformity of State legislation. Since its organization, the commissioners have promulgated over one hundred uniform acts, including a number in the field of commercial law. The first was the Negotiable Instruments Act promulgated in 1896, followed, among others, by the Sales Act and the Warehouse Receipts Act, both in 1906, the Bills of Lading Act and the Stock Transfer Act, both in 1909, the Conditional Sales Act in 1918, the Fiduciaries Act in 1922, and the Trust Receipts Act in 1933.

Colorado has never enacted the Bills of Lading Act, the Trust Receipts Act, or the Conditional Sales Act.

Since promulgation of the above mentioned uniform acts, mostly over fifty years ago, only the Negotiable Instruments Act and the Warehouse Receipts Act have been enacted in all American jurisdictions. However, with respect to the former, approximately eighty instances of conflicting interpretation by the courts have been documented so that uniformity even in this area of universal enactment is really non-existent. With respect to the latter, uniform amendments promulgated in 1922 have been adopted in only about sixteen jurisdictions so that in this area again there is no real uniformity.

The Sales Act has been enacted in about thirty-six jurisdictions, but again uniform amendments promulgated in 1922 have been adopted in only eleven of these thirty-six jurisdictions so that there is no uniformity in this area.

The mere age of these various acts indicates the real need for revision. It is also obvious from their lack of wide acceptance that piece-meal proposals or separate revisions of the existing uniform acts will not promote uniformity of legislation.

Aside from these uniform acts there are innumerable other statutes dealing with commercial subjects but with substantial differences among the states. For example, there is the Bank Collection Code enacted in Colorado in 1957. That code was based upon the recommended code of the American Bankers Association. There also is a great variety of chattel security statutes such as those relating to chattel mortgages, factor's liens, trust receipts, and many other types of lien statutes.

As far back as the 1920's, dissatisfaction with the Uniform Sales Act reached the stage of public expression. Uniform amendments promulgated in 1922 did not solve all of the problems. Continued and growing dissatisfaction culminated in the drafting of a revision to apply to and regulate interstate sales only. This revision was introduced in the Congress of the United States in 1940 (H.R. 8176, 76th Congress, 2nd Session).

It was thought the enactment of this measure, applicable to interstate sales, would compel the states to adopt a similar revision. Obviously, if this did not happen, a statute regulating interstate sales only would create a chaotic condition, worse than the existing evil, with one set of laws governing interstate sales and another set governing intrastate sales, with considerable doubt at the inception of any given transaction as to which law applied. It was this agitation for reform that triggered the idea of a uniform commercial code to revise not only the Uniform Sales Act but other commercial statutes as well which from mere lapse of time had become out-moded. Out of this came the arrangement in 1940 between the National Conference of Commissioners on Uniform State Laws and the American Law Institute to undertake the study and drafting necessary to develop the code.

As we more and more after 1900 became "One Country" by reason of easier and more rapid communication and and transportation, as our industrial empire grew and expanded and in the process became more decentralized and scattered without reference to state lines, the need and demand for uniformity in commercial areas became more pronounced.

The sponsoring organizations in 1940 assembled a research staff under a chief reporter with ample financial aid secured from the Falk Foundation. The preliminary research to determine existing law and actual commercial practices was done by the staff which in turn reported with a draft of the proposed statutory provision to an advisory committee of lawyers, judges, law school professors, and business people. After discussion and criticism at this level, the matter would be referred back to the staff for reworking to come again to the advisory committee. This was a continuing back and forth process over many years and in its normal routine thousands of persons were consulted, conflicting views reconciled, etc.

At least twice a year, when the drafting had reached a point for presentation to the entire membership of the commissioners, it was so submitted and again underwent critical scrutiny. The same process of submission was followed frequently with the Council of the Law Institute and at least once a year with the membership of that institute.

The sales article was initially completed around 1942. The remaining work was slowed somewhat by reason of the war but was undertaken afresh in 1945. It was at this time that various committees of the American Bar Association interested themselves in the project for the purpose of scrutinizing the work being done.

The code as a completely integrated whole made its first appearande in 1949. Objection to this first draft resulted in a complete re-examination of the project, with public hearings being held by the editorial board of the sponsoring organizations. From 1949 to 1952 the code went through several complete revisions and then in 1952 was finally approved by the commissioners and the Law Institute and the American Bar Association. It was this draft which was enacted in Pennsylvania in 1953, effective July 1, 1954.

This enactment lead to official minute and detailed studies of the code in a number of other states. The most thorough of these was that conducted by the New York Law Revision Commission with an appropria-

tion in excess of $100,000. The New York Commission assembled a staff of experts not previously identified with the code project and took approximately three years to conclude its study of the 1952 draft. Its conslusion with respect to that draft was that the code was a worthwhile undertaking, that the codification of law in the commercial field was desirable, but that the draft then under consideration was not yet in satisfactory form for enactment, although the commission did approve of many of the basic and fundamental theories underlying the code. Of course, since then the code was revised in 1958 and this revision was enacted in New York in 1962.

In addition to the New York and equally-detailed studies in other states, the Pennsylvania State Chamber of Commerce initiated a program of re-examination of the code through a committee representing all segments of commerce, industry and banking in that state.

At the same time the sponsoring organizations enlarged their editorial board which set up several subcommittees with respect to the various articles of the code for purposes of a re-consideration in collaboration with the other studies then being made.

All of this rather intensive activity resulted in the 1958 Revised Code which with the 1962 changes is embodied in the act recommended by the committee.

THE REASONS FOR THE APPROVAL OF THE CODE BY YOUR COMMITTEE

1. Practically all of our present commercial statutory law was drafted, promulgated, and enacted more than fifty years ago. Since then there has been a tremendous growth in commercial activity and many new patterns and practices have developed. In short, these present statutes are outmoded, are not in keeping with current commercial practices, and a revision thereof is highly desirable.

2. Our present commercial statutory law is in many respects extremely uncertain because of inconsistencies in the law itself or because of inconsistent interpretations thereof. There are also areas where there is no statutory coverage whatsoever.

For example, any attempt to predetermine rights or risks in a sales transaction under the Uniform Sales Act is uncertain where such rights or risks depend on who has title to the goods since this in turn depends on the presumed intent of the parties to be determined factually.

In addition to the above-mentioned almost eighty instances where conflicting interpretations have developed in the area of negotiable instruments, there is uncertainty as to whether the Uniform Negotiable Instruments Act applies to corporate debt obligations which do not literally conform to the statutory requirements for negotiability but as to which there are substantial economic reasons why they should be treated as negotiable.

Aside from the need for modernizing, there is a real need for a revision of our commercial statutes in the interest of simplicity, clarity, and certainty.

Section 1-107 provides that any claim or right arising out of an alleged breach can be discharged in whole, or in part, without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. This probably constitutes a change in the law of Colorado.

Article I also contains general definitions and principles of interpretation. Special definitions for succeeding articles are set forth in those articles. The words defined will be discussed in connection with their use throughout the code; their meaning in the abstract has no significance.

Section 1-206 provides a statute of frauds limitation of $5,000 for personal property other than (1) goods as defined in Section 2-201 (where the limitation is $500), or (2) securities where no dollar limitation is set forth (Section 8-319), or (3) security agreements which have no dollar limitation (Section 9-203). The statute of frauds relating to the sale of goods will increase the amount from $50 to $500.

The adoption of the uniform commercial code in Colorado would require the repeal of the following uniform acts and other laws which were adopted in Colorado on the dates indicated, as well as miscellaneous other statutes:

Uniform Sales Act	1941
Negotiable Instruments Law	1897
Uniform Warehouse Receipts Act	1911
Uniform Stock Transfer Act	1927
Uniform Fiduciaries Act	1923
Bulk Sales Act, as amended in	1961
Colorado Banking Code, as amended in	1957
Chattel Mortgage Laws	--

In general, present Colorado statutes do not contain statements of principles of the kind discussed above. To the extent that such principles will become a part of our statutory law if the code is adopted in Colorado, they will constitute new guides for the supreme court in cases involving interpretations of the succeeding articles.

ARTICLE 2 - SALES

I. What Article 2 does.

Article 2 applies to transactions in sales of goods. "Goods" includes movables and growing crops and such items as timber and minerals when they are to be removed from the real estate by the seller. It does not include non-movables, investment securities and rights of action or transfers which are intended only as security.

II. Formation of Contract.

A. Statute of Frauds. The writing relied on to satisfy the statute of frauds is not insufficient merely because it omits or incorrectly states the terms. The only limitation is that the contract is not enforceable beyond the quantity of goods shown in the writing.

As between "merchants" (that is, persons familiar with this type of transaction) when a letter confirming the contract is received, failure to deny in writing within ten days will render the letter a sufficient writing against the recipient as well as the sender.

As to part payment and also part acceptance, the code permits enforcement of an oral contract only to the extent of the goods paid for and accepted as opposed to the existing law whereupon enforcement and the entire contract would result.

Contracts subject to the statute of frauds would be those greater than $500 as opposed to the present law of $50.

B. Indefiniteness. A contract will not fail for indefiniteness even though one or more terms are left open, provided that there is a reasonably certain basis for supply the missing term.

C. Firm Offers. A written promise to hold an offer open will be enforced according to its terms for a period not to exceed three months if the promise is made and signed by the "merchant" even if the offer is not supported by independent consideration.

D. Counter-Offers. The effect of an acceptance is not destroyed though additional terms are stated, unless the acceptance is expressly made conditional on the offerors assent to the additional terms. The additional terms are viewed as mere proposals for additions to the contract except that, where the parties are merchants then the additional terms do not materially alter the original offer, the additional terms become part of the contract unless the other party indicates his objections within a reasonable time.

E. Acceptance of Offer - Generally. Offers are to be construed as inviting acceptance in any reasonable manner, rejecting the requirements that the acceptance be transmitted by the same medium by which the offer was made.

F. Unilateral Contracts. The offeree has no power to accept by performance unless he notifies the offeror within a reasonable time that he intends to accept. When the offeror asks for current shipment, shipment of non-conforming goods constitutes both an acceptance and a breach.

G. Modification of Contract. An agreement made in good faith modifying a contract does not need consideration to be binding.

III. Interpretation and Performance.

A. Assignments. 1. Rights. Unless the contract expressly prohibits assignment of rights, or unless the assignment would materially increase the other party's burdens, all rights of buyer or seller may be assigned. Rights arising from the other party's breach of contract or from the assignor's due performance of his entire obligation may be assigned despite contrary provisions in the contract.

2. Duties may be assigned if the other party has no substantial interest in having the assignor perform personally.

B. Warranties. 1. Types of Warranties. a. Express Warranties. Express warranties include the warranty that the goods will be of the type described in the contract and the similar warranty that the goods will conform to any sample or model which was the basis for the contract. The code departs from the sales act in omitting any requirement that the buyer prove his reliance upon an express warranty.

b. Warranties of Title. The seller impliedly warrants that he has power to convey good title and that the goods will be delivered free of any encumbrance unknown to the buyer at the time of contracting and that the goods will be delivered free of any claim or infringement except when the goods have been manufactured in compliance with specifications furnished by the buyer.

c. Implied Warranties. (1) Warranty of Merchantability. A warranty of merchantability arises whenever goods are sold by a person whose occupation is to sell goods of that type. Merchantability is the fair average quality of and uniformity and specifically includes food or drink to be consumed on the premises.

(2) Warranty of Fitness for a Particular Purpose. This arises when a seller has reason to know that the buyer intends to use the goods for a particular purpose and the buyer is relying on the seller's skill or judgment.

2. Persons to whom Warranties Extend. The code leaves the privity questions for a case to case determination except that a seller's warranties extend to the family and household of the buyer and certain quests if it is reasonable to expect that such a person may use the goods.

3. Limitation of Warranties. A court is permitted to refuse to enforce any clause of a contract that was unconscionable at the time it was made. This concept of unconscionability probably does not refer to comparative bargaining power but to prevention of unfair surprise. Apart from the unconscionability section, the code sets out specifically the manner in which each type of warranty may be limited.

An express warranty and a limitation of warranty liability are to be construed as consistent, if possible, but when such construction is impossible the express warranty will prevail.

The implied warranty of title (and the warranty against infringement) can be excluded or modified by specific language or by certain circumstances, such as sales under execution or by foreclosing lienors, indicating that the seller intends to sell only on a quit-claim basis.

Other implied warranties can be excluded or modified by the trade usage or course of dealings and by expressions such as "with all faults." If the limitation is in writing, the writing must be conspicuous and the warranty of fitness for a particular use can be limited only in writing.

C. Delivery. When the contract is entirely silent as to delivery, the place of delivery is the seller's place of business.

When the goods are in the hands of a bailee and the goods are not to be moved, tender of delivery is achieved by tender to the buyer of a negotiable document of title or by the bailee's acknowledgment of the buyer's rights to possession. When the goods are to be given to a carrier the delivery obligation depends upon whether the contract is a shipment contract or a destination contract. The determination as to whether a contract is a shipment or destination contract does not depend upon which party pays the shipping costs. Rather, contracts are presumed to be shipment contracts until the contrary is proven.

D. Consequences of Non-Conforming Delivery. If delivery fails in any respect to conform to the contract the buyer may reject the tender in part or in whole. This is, however, limited as follows:

1. Cure. Until the time for performance has expired, the seller may "cure" by subsequent tender of conforming delivery. After the expiration of the time for performance the seller is entitled to cure if he had reason to believe that the original tender would have been acceptable. A non-conformity capable of cure must be communicated by the buyer to the seller with specificity.

2. Substantial performance. Once a buyer has accepted the goods, he may revoke acceptance only if the nonconformity substantially impairs the value of the contract. In an installment contract the buyer may reject only the nonconforming installment unless the nonconformity, together with any prior nonconformities that may have occurred, substantially impairs the value of the entire contract.

3. Substituted performance. If the goods are damaged without fault of either party and before risk of loss has passed to the buyer, the buyer may cancel the contract or accept the goods with due allowance in the price, but he may not treat the contract as breached. When delivery is delayed or rendered commercially impractical by an event whose non-occurrence was a basic assumption of the contract, the buyer has the alternative of cancelling the contract or of accepting a reduced or delayed performance. However, no breach will have occurred. When the agreed manner of delivery has become commercially impractical, the buyer must accept a reasonable substitute.

E. Risk of Loss and Insurable Interest. Risk of loss hinged on the location of "title" is rejected under the code; rather, risk of loss is governed by the delivery obligation, in the absence of breach or contrary agreement.

Where the seller breaches a contract by tendering nonconforming goods, the risk of loss remains on the seller until cure or acceptance. However, once the buyer has accepted, even though he may rightfully revoke acceptance, risk of loss rests on seller only to the extent the buyer's insurance is adequate. Correspondingly, when prior to delivery the buyer breaches a contract, risk of loss passes to buyer only to the extent that the seller's insurance is inadequate.

The buyer's insurable interest arises as soon as existing goods are identified to the contract and the seller's insurable interest continues so long as the seller retains any security interest in the goods.

F. Payment. Payment is presumed to be due only after the buyer has had an opportunity to inspect the goods.

When the contract calls for payment against documents, the buyer is not entitled to inspect before payment is due. The payment here in no way limits the buyer's remedies if the goods are nonconforming.

Any manner of payment may be used which is current in the ordinary course of business. Payment by check is conditional upon honor on due presentment.

G. Assurance of Performance. A buyer or seller who has reasonable ground for doubting the ability or willingness of the other party to perform may demand adequate assurance of performance from the other party.

IV. Remedies.

A. Acceptance. Acceptance occurs whenever, after a reasonable opportunity to inspect, the buyer notifies the seller that the goods are conforming or that the goods will be accepted despite conformity. The buyer will be deemed to have accepted the goods if he fails to object within a reasonable time or if he treats the goods in a manner inconsistent with the seller's ownership.

B. Sellers's Remedy in the Absence of Acceptance. If the buyer's rejection is proper, the buyer must nevertheless hold the goods under reasonable care for a long enough time to permit removal by the seller. When the buyer deals in goods of the type rejected, he must honor reasonable instructions from the seller as to disposition of the goods and, in the absence of such instructions, he must sell the goods for the seller's account if the goods are subject to rapid decline in value.

When the buyer has breached the contract without having accepted the goods, the seller's remedies fall into two categories:

1. Remedies which reach directly to the goods themselves -- the seller may withhold delivery or if the goods are in the hands of a bailee he may, as against the buyer, "stop in transit" at any time prior to delivery. If the breach occurs before the manufacture of the goods has been completed, the seller may complete the goods without violating any rule against litigation or damages. If the buyers breach occurs when he is insolvent, the seller, under certain circumstances, may recover the goods even after delivery and acceptance.

2. Remedies which allow monetary damages -- the seller has the alternative of suing for damages as computed by "resale," or of suing for "damages for non-acceptance." As to the former, on learning of the breach, the seller may, subject to specified safeguards, sell the goods at public or private sale, and then sue for the difference between the contract price and the resale price. The seller may retain any profit. Alternatively the seller may sue for "damages for non-acceptance," such damages being measured by the difference between the contract price and the market price at time and place for delivery, allowing such additional damages as necessary to put the seller in as

good a position as he would have been had there been performance. An action for price is not permitted unless it can be shown that resale is impossible or that the goods have been damaged after risk of loss has passed to the buyer.

C. Sellers Remedies on Acceptance. Once the goods have been accepted, the seller has standing to maintain an action for the price even though the seller may have also breached the contract. The buyer's claim must be asserted by way of counterclaim rather than defense.

D. Buyer's Remedies in the Absence of Acceptance. 1. Remedies reaching goods. a. Goods rejected for non-conformity. The buyer is given a possessory security interest to the extent of payments on the purchase price, inspection costs, and expenses incurred pursuant to the buyer's duty to dispose of rightfully rejected goods. To satisfy this security interest, the buyer has the rights of resale.

b. Specific Performance. Buyer has a right to obtain specific goods identified to the contract if comparable goods cannot be procured elsewhere or if they have been "shipped under reservation" and payment has been tendered.

2. Damages. The buyer is given the alternative of suing for damages as computed by "cover" or for "damages for non-delivery." "Cover" is the buyer's right to purchase substitute goods within a reasonable time after learning of the seller's breach. He may then sue the seller for the difference between the cover price and the contract price. "Damages for non-delivery" are defined as the difference between the market price at the time the buyer learned of the breach and the contract price. This changes the existing law which provided that the relevant market price was that prevailing at the time delivery should have been made. Additionally, the buyer may also recover consequential damages which are any losses resulting from the buyer's business position which the seller had reason to know at the time of contracting. The buyer is under duty to mitigate consequential damages.

E. Buyer's Remedies after Acceptance. The measure of damages is the loss resulting in ordinary course from the breach. Where the defect is also a breach of warranty, the measure of damages normally to be applied is the difference between the value of the goods as warranted and the value as accepted. Value is computed as of the time and place of acceptance. Consequential damages may also be recovered.

F. Contractual Limitations on Remedies. A reasonable amount of liquidated damages is permitted. Also, the parties may limit the type of remedies that may be resorted to, although when circumstances cause a limited remedy to fail of its purpose, the limitation may be repudiated. Parties are permitted to limit or exclude consequential damages, but such limitations are expressly subject to the "unconscionability section."

G. Statute of Limitations. An action for breach of any contract for sale of goods must be commenced within four years rather than the six-year period which is now the law in Colorado. Furthermore, by the original agreement the parties may reduce the period of limitations to not less than one year, but may not extend the period.

V. Third Persons.

A. Creditors of the Seller. A buyer who has paid a part of of the price for goods identified to the contract may recover the goods from the seller on tender of the balance of the price, provided that the seller has become insolvent within ten days after he first received payment from the buyer. This right to recover the goods is superior to the rights of the seller's creditors, except for rights they obtain under Article 9 of the code, or unless the identification of the goods to the contract, or the seller's retention of possession, amounts to a fraudulent transfer or voidable preference. The uniform code would subject the reclaiming seller to prior rights of a lien creditor. The Colorado proposal follows the code as enacted in New York, California, Illinois, New Mexico, and Maine and which does not give the lien creditor this superior right. This will avoid changing the existing Colorado law as found in In re Appel Suit and Cloak Co., 198 F. 2d 322 and see In re Kravitz, 278 F. 2d 820.

B. The Creditors of the Buyer. A seller may recover goods received on credit by the buyer when insolvent if demand for the goods is made within ten days after the goods are received. If, however, the seller has received from the buyer a written misrepresentation of solvency within three months prior to delivery of the goods, then the ten-day limitation does not apply. This right is superior to the right of the buyer's creditors unless these creditors have a security interest.

Sellers can no longer rely on the so-called "sale on consignment" to protect their security interests in goods sold for resale. A sale where title is purported to be reserved in the seller until resale does not give the seller or consignor a right superior to the buyer's creditors unless there is compliance with Article 9.

C. Good Faith Purchases From the Buyer. The seller's power to recover the goods is defeated by resale to a buyer who has no knowledge of the seller's interest and who purchases in the ordinary course of the business.

ARTICLE 3 - COMMERCIAL PAPER

Article 3 of the uniform commercial code is a precise and concise revision of the oldest of the uniform laws, the Negotiable Instruments Law, which was adopted in Colorado in 1897. Changes in commercial language and practice during the nearly 70 years since the NIL was drafted, together with inconsistent court interpretations of many sections causing a lack of uniformity in the law, have resulted in a need for an up-dating of that statute. Article 3 is thoroughly integrated with the remainder of the code so that the rules governing the law of commercial paper are part of a consistent pattern of commercial law.

Although Article 3 of the code is considerably shorter than the NIL, the logical arrangement of the sections makes it an easier statute to work with than the NIL. This contribution, perhaps most significant in Article 3, overshadows any changes in the law effected by the article, although such changes do exist, some of the more

significant of which are noted below. Article 3 continues the policy of the NIL of promoting the free flow of commercial paper which is used so extensively as a substitute for money.

The following sections of the code may be noted as either changing the law of the NIL or specifying a rule where none existed under the NIL:

1. UCC Section 3-105 sets forth rules as to when a promise or order is unconditional (a requirement of negotiability), and provides that a reference in an instrument to some other document does not render the promise or order conditional unless the instrument is specifically made "subject to" the other document.

2. UCC Section 3-109 resolves certain problems which arose under the NIL as to the negotiability of an instrument the payable date of which is subject to acceleration or extension, favoring negotiability in both instances. However, the NIL rule that an instrument is negotiable which is payable upon an event uncertain as to time of occurrence is reversed.

3. The committee has recommended adoption of alternative B of UCC Section 3-121 providing that "A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it." Although this reverses the rule of CRS 1953, 95-1-87, it conforms to the rule adopted by the majority of the western states which have adopted the code and is believed to conform to the actual practice followed by Colorado banks.

4. UCC Section 3-204 changes the "once bearer paper always bearer paper" rule under the NIL. See CRS 1953, 95-1-40. Under UCC Section 3-204 any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

5. UCC Section 3-302 defines the requirements of a holder in due course, eliminating the requirement that the instrument be complete and regular on its face, but achieves much the same result in that it must be taken "in good faith." Subsection (2) states that a payee may be a holder in due course, resolving the question which existed under the NIL.

6. UCC Section 3-304 is more explicit than CRS 1953, 95-1-55 and 56, as to what constitutes notice of a defect prohibiting a purchaser from obtaining the status of a holder in due course.

7. UCC Section 3-406 is new and places the burden of loss resulting from a material alteration or unauthorized signature on any party who, by his negligence, contributes to the alteration or making of the unauthorized signature.

8. UCC Sections 3-501 to 3-511 combine a great many NIL sections into a unified presentation of all rules concerning presentment, notice of dishonor, protest, and the rights based thereon. Few substantive rules are changed. In one significant change, UCC Section 3-510 provides that if an instrument is not accepted within the required time after presentment, it is considered dishonored rather than

constructively accepted as under CRS 1953, 95-2-12. See UCC Section 3-506.

9. UCC Section 3-802 is new and provides that, unless otherwise agreed, an instrument taken for an underlying obligation suspends the obligation until the instrument is due. Subsection (2), however, specifies that taking of a non-postdated check in good faith does not of itself extend the time on the original obligation so as to discharge a surety.

Upon adoption of Article 3 of the Code, Articles 1 through 4 of Chapter 95 of the Colorado Revised Statutes, 1953, should be repealed.

ARTICLE 4 - BANK DEPOSITS and COLLECTIONS

Article 4 of the uniform commercial code provides uniform rules to govern the collection by banks of checks and other instruments for the payment of money, while preserving flexibility for the development of improved methods of collecting such items. The article also contains rules governing the relationship of banks with depositors in connection with the collection and payment of items.

Uniform law in this area is a necessity: Individual Federal Reserve banks process as many as 1,000,000 items a day, and the larger banks in Denver in excess of 200,000 a day. Banks with less than $5,000,000 on deposit handle from 1,000 to 2,000 items daily.

Bank collections in Colorado are now governed primarily by the provisions of CRS 14-18-1 et seq., enacted in 1957 and based largely upon the Bank Collection Code of the American Bankers Association (as well as the ABA's Model Deferred Posting Statute). The Bank Collection Code has been vigorously attacked in other sections of the country on the ground that it was drafted with a view to protecting collecting banks from liability to the nonbanking public for any mishaps that might occur during the collection process and on the ground that its draftsmanship is "fifth rate."

The provisions of Article 4 are intended to answer the criticisms mentioned in the above paragraph. Other often-mentioned advantages are:

(1) Items in the process of bank collection today -- involving more than a billion transactions daily -- almost invariably cross state lines and a truly comprehensive and uniform act setting forth the basic rights of the parties concerned in any bank collection is badly needed; and

(2) An opportunity is presented to codify into law a number of desirable collection practices and the results of beneficial case law, to prohibit or at least limit other collection practices deemed undesirable, and to reject less desirable case law.

Article 4 does not fundamentally change the rights and obligations flowing from the provisions of CRS 14-18-1 et seq. A possible exception to this Section 4-403(2), which states that a customer's oral

stop payment order is binding on a bank for 14 calendar days. Existing Colorado law does not allow such oral orders. The committee believes that provision recognizes a practice followed by a great many banks in Colorado; and that banks which do not care to honor such oral orders may vary the effect of this provision by an agreement to the contrary on signature cards or other contracts with its depositors. Such variation is allowed by Section 4-103(1) of the Code.

ARTICLE 5 - LETTERS OF CREDIT

Colorado has no statutory or case law relating to letters of credit. A letter of credit is defined in the code as a contract under which a bank or some other person undertakes, at the request of its customer, to honor drafts or other demands for payment for a period of time by the beneficiary named in the contract, upon presentation by that person of certain prescribed documents. The principal function of a letter of credit is to finance the movement of goods and assure the seller, who is normally the beneficiary of the credit, that he will be paid. This is done through the "documentary letter of credit. "(as distinguished from the "clean letter of credit"), by substituting the acceptable credit standing of a bank for the unknown or doubtful credit of the buyer who is the bank's customer.

This device has been used primarily in connection with foreign imports. It is efficient and inexpensive and should be made available to buyers in Colorado of goods from foreign countries. But its advantages may also be extended to domestic commerce.

Article 5 does not involve any fundamental changes in the prior rules and standards which were adopted as the Uniform Customs and Practices for Commercial Documentary Credits by the International Chamber of Commerce. While recognized generally by banks in this country, the Uniform Customs and Practices were never adopted by treaty, or by federal or state statutes. The inclusion of the article in the uniform commercial code will give state statutory recognition to this financial device.

ARTICLE 6 - BULK TRANSFERS

The UCC covers any transfer in bulk, not in the ordinary course, of a major part of an enterprise whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, with eight enumerated exceptions. Present Colorado law which was enacted in 1961 covers the transfer in bulk, not in the ordinary course, of any part, or the whole, stock in trade of any wholesale or retail merchandising business, with more limited exceptions.

The provisions with respect to the listing of creditors and the description of the property to be transferred are substantially the same. Present Colorado law requires that a notice of the transfer be posted at least ten days before the transfer at the place of business where the stock in trade is located, and publication of the notice of transfer at least once in a newspaper of general circulation in the county at least five days prior to the transfer. Article 6 does not require any posting of the notice at the place of business, or

publication in any newspaper, but requires the transferee to preserve the list of creditors and the schedule of property in a designated place in the state of Colorado for six months, or to file the list and schedule in the office of the Secretary of State. Present Colorado law requires the transferee to send a copy of the notice of transfer to every creditor by certified or registered mail at least ten days before the transfer. The UCC requires the transferee at least ten days before he takes possession of the goods, or pays for them, whichever happens first, to give notice to all creditors, stating that the bulk transfer is about to be made, the names and business addresses of the transferor and transferee, and whether or not all of the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and, if so, the address to which the creditors should send their bills, but if the debts are not to be so paid, or if the transferee is in doubt on that point, then the notice must include the location and general description of the property and the estimated total of the transferor's debts, whether the transfer is to pay existing debts, and, if so, the amount and to whom, or whether the transfer is for new consideration, and, if so, the amount, and time and place of payment.

Present Colorado law has no provision imposing any obligations upon auctioneers to give notice to creditors, but the UCC requires auctioneers to give notice at least ten days, either personally or by registered or certified mail. Failure of the autioneer to do so does not affect the validity of the sale, but if the autioneer knows that the auction constitutes a bulk transfer, the auctioneer is liable to the creditors of the transferor up to but not exceeding the net proceeds of the auction.

Under present Colorado law, persons the transferor has reason to believe may become creditors prior to the date of transfer are entitled to notice, but under the UCC creditors who become such after the notice to creditors has been given are not entitled to notice.

Under present Colorado law, the transfer can be adjourned to a time not more than 30 days subsequent to the original date, and the transferor can be found guilty of perjury if he makes a false affidavit. The UCC has no provision for adjournment of the transfer and imposes no criminal penalties.

Civil liability for noncompliance under the two laws is substantially the same, the Colorado law specifying that the transferee shall become a receiver and be held accountable to creditors for the stock in trade that came into his possession, and the UCC specifying that in the event of noncompliance the bulk transfer is ineffective as against creditors of the transferor.

Under Colorado law, the remedy under the UCC would be by levy on the assets in the hands of the transferee, or perhaps by an action to set aside a fraudulent transfer, or equitable relief by way of injunction or receivership. A defective bulk transfer constitutes an act of bankruptcy, and creditors could unite to invoke the avoiding powers of the trustee under Section 70e of the Bankruptcy Act.

After a bulk transfer has been consummated in accordance with the provisions of the UCC, creditors of the transferor have no rights against the assets of the transferee. Creditors are required to protect themselves before the transfer is consummated.

Present Colorado law provides a three-year statute of limitations, while under the UCC a six-month statute of limitations is provided.

ARTICLE 7 - DOCUMENTS OF TITLE

Article 7 of the uniform commercial code covers warehouse receipts, bills of lading, and other documents of title. If enacted into law in Colorado, this article would govern intrastate transactions. The interstate transportation of goods will continue to be governed by the Federal Bills of Lading Act. In the process of developing Article 7, its provisions have in most instances been brought into line with the Federal Bills of Lading Act.

Colorado adopted the Uniform Warehouse Receipts Act in 1911, and in 1941 adopted the Uniform Sales Act which, in Sections 27-40, deals with the negotiable and non-negotiable documents of title. Colorado never adopted the Uniform Bills of Lading Act. It was, however, enacted in 31 other states.

The report of the commission which studied the uniform commercial code in Maryland described Article 7, in part, as follows:

> Article 7 makes no major policy changes but it does make a number of minor changes. In addition, it reorganizes and consolidates the statutory law relating to Documents of Title, expands its coverage beyond those of the older Acts, and clarifies and makes certain some ambiguous provisions in the older laws. ***
>
> One policy change provides that a warehouseman is one engaged in storing goods for hire (7-101) and not one who is "lawfully" engaged in the business of storing, as is specified in present law. There is no reason why the unlawfulness of a warehousing enterprise should protect the warehouseman from the obligations of the documents he issues.
>
> Under present law, the holder of a negotiable receipt covering part of a mass of fungible goods, in the event of a sale of such goods by the warehouseman, can recover the goods if he can trace them. However, the difficulty of tracing makes the rights of such receipt holder of little practical value. Section 7-205 clarifies the law by providing that a buyer in the ordinary course of business who takes delivery of fungible goods from a warehouseman who is in the business of buying and selling such goods takes free of any claim under the warehouse receipt. This resolves in favor of the good-faith buyer the conflict with the receipt holder who also acted in good faith but who made the sale possible by depositing with one in the business of selling. This provision is consonant with Section 2-403 on the power of one entrusted with goods who is in the

business of dealing in such goods of transferring title to a good-faith purchaser in the ordinary course of business. ***

Provision is made for termination of storage at the warehouseman's option at the end of a stated period and if none is specified on thirty days notice. If the goods are not removed, the warehouseman may sell them (7-206). Present law does not contain a comparable provision. ***

Article 7 clarifies a number of uncertain provisions in our present law. The present uniform Warehouse Receipts Act and the Uniform Bills of Lading Act both prohibit inclusion in a document of a provision impairing the obligation of the bailee to exercise due care. There is presently a conflict as to whether this injunction is violated by a stipulation as to the value of the goods, particularly where the value is obviously understated. Within certain limits, the Code approves such stipulations in Sections 7-204 and 7-309, the justification being that a fully insured bailor should not be required to pay charges on full value. This permitted limitation of liability does not apply to an appropriation of the goods to the bailee's own use. The Code provision is in accord with the Carmack Amendment to the Interstate Commerce Act applicable to bills of lading in inter-state shipments. ***

The issuer is liable for damages caused by over-issue or failure to identify conspicuously any duplicate document (7-402). Present comparable law only applies in case of a negotiable document.

Section 7-403 integrates into one Section what the old Acts covered with unnecessary and somewhat confusing duplication of effort in three Sections: one covering the obligation of the bailee to deliver, another covering justification for delivery, and still a third, liability for non-delivery. ***

It is recommended that Article 7 be enacted in Colorado with the optional clauses of Section 7-204 and 7-403(1)(b) omitted; that Article 16 of Chapter 7, CRS 1953, relating to grain warehouses be repealed; and that Articles 1, 2, 3 and 5 of Chapter 146, CRS 1953, as well as Sections 27-40 inclusive, of the Uniform Sales Act be repealed. However, Article 4 of Chapter 146, which contains the criminal sanctions relating to compliance with various provisions of the warehouse receipt laws, should be retained in appropriate changes in references to sections of the Colorado Revised Statutes, which are set forth therein. The committee finds no need for the repeal of Article 13 of Chapter 115 relating to unclaimed freight.

ARTICLE 8 - INVESTMENT SECURITIES

An eminent authority describes Article 8 of the UCC in these words:

> We are talking about conventional types of securities, stocks and bonds and debentures, the things we handle in ordinary, everyday corporate and banking practice. We are not talking about the more esoteric orange grove contracts in Florida or silver foxes on the hoof in California that are securities for regulatory purposes.
>
> What Article 8 does first is to make securities, as defined, negotiable instruments in the historical legal sense, so that the bona fide purchaser of a security is invulnerable both to issuer's defenses and to adverse claims of ownership or interest, legal or equitable by or through prior holders.
>
> As I see it, the major contributions Article 8 has made in the whole area of the negotiability of securities are these:
>
> First, Article 8 distinguishes clearly between questions of the genuineness and effectiveness of the indorsement (power to indorse), and those involving rightfulness of disposition (power to deliver if you will), of the indorsed instrument.
>
> Second, it substantially cuts down the cases in which a purchaser of a security, even one known to be in fiduciary ownership, is required to investigate -- at the risk of his bona fide purchaser status; and
>
> Third, it clearly limits the cases in which an issuer is required to investigate before registering a transfer to two specific situations:
>
> 1. Where an adverse claimant has filed a proper "stop transfer" notice; or
>
> 2. Where the issuer itself has demanded and received "excess documentation" -- let us call it that for lack of a better term.
>
> --Carlos L. Israels, How to Handle Transfers of Stock, Bonds and Other Investment Securities, 19 Bus. Law 91 (1963).

Relatively little law, either statutory or by court decision, exists which applies to the billions of dollars per year of transactions to which Article 8 would apply. The Uniform Stock Transfer Act, CRS 31-9-1 et. seq., adopted in Colorado in 1927, would be superceded

by Article 8 and covers only a few of the matters which Article 8 would cover.

To a large extent, existing law and commercial practice have been followed in the drafting of this article. However, a conscious attempt has been made to change the law of those cases holding an issuer or purchaser liable for the wrongful disposition of the proceeds of a sale of stock, for example, stock sold by a trustee and applied to his personal benefit.

This problem has been met, in the case of fiduciaries, by the adoption of the Uniform Act for the Simplification of Fiduciary Security Transfers, CRS 57-6-1 et. seq., adopted in Colorado in 1959. Article 8 applies the principles of the simplification act to all transfers, and in fact penalizes the issuer for requiring excessive documentation.

The 1962 version of the UCC takes in account the changes made by New York at the insistence of the stock exchanges, banks, and transfer agents located there. Very few changes have been made in other states.

No instance has been found where existing Colorado law would be changed, other than in repeal of the Uniform Stock Transfer Act and changes in two principles contained therein:

1. CRS 31-9-1 makes delivery and indorsement necessary to effect a change of ownership of stock. UCC Section 8-307 makes only (voluntary) delivery of the security necessary to effect change of ownership with the transferor being compelled to supply any necessary indorsements.

2. CRS 31-9-16 permits a court to order issuance of a replacement certificate. UCC Section 8-405 makes issuance of a replacement certificate mandatory when the requirements of the section are met, without court order.

It is recommended:

1. That Article 8 be adopted unchanged.

2. That Article 1, Chapter 39, CRS 1953 be repealed.

3. That Article 6, Chapter 57, CRS 1953 be retained by specific reference 10-104(2) of the UCC.

ARTICLE 9 - SECURED TRANSACTIONS

Very little of the substance of existing Colorado security law would be changed by the adoption of Article 9. One does not arrive at

this conclusion quickly or easily, however, from the casual reading of the text of the uniform commercial code. Indeed, the conclusion can only be reached in about four steps (or jolts) and not without some mental turmoil.

The first step is the recognition that the code provides in one article an entire system that is to govern all security transactions, abolishing old language of pledge, of chattel mortgage, of trust receipts, of conditional sales, and even of such hybrid devices for security as the sale and lease-back or the consignment of goods. The scope of the article is readily found in the definition of security interests in Section 1-201(37) and in the policy statement of Section 9-102.

So broad and inclusive an application of one code system requires new language that is both precise and distinct from the connotations of the mortgage, pledge and trust receipt. The second step comes with the realization of the importance of code definitions. At least thirty-two are contained or adopted in Article 9 and another forty-four set out in Article 1 as applicable. The impact of so many definitions upon the student or the practicing lawyer is heavy. The definitions in Article 1 and in Part I of Article 9 can only be assimilated after study and familiarity, and here lies a basic problem in understanding the intricate relationship of the fifty-three sections of the Article. Each of the seventy-six definitions is carefully stated, is used without confusion, and of course cannot be changed without loss of value in the article as a system of codified law.

Next, after recognizing the importance of the precise definitions of the article, the student realizes that the article uses the definitions to distinguish carefully the business or economic function of different types of security in different relationships. Thus, the sale of personal property is excluded from coverage in Article 9 but the sale of intangible rights is so closely allied to their transfer as security that the article does cover sales of accounts or contract rights or chattel paper. Again, the protection of purchase money security interests in household furniture is quite a different problem from the protection of purchase money security interests in fixtures and the necessity for filing a security agreement in the latter case is clear, but in the former case is largely unnecessary as shown by the fact that many chattel mortgages on household goods are today not filed by the most sophisticated lenders. It is the discovery of a multitude of rules affecting different classes of property, all within Article 9, that has the most frightening impact upon the new student.

The fourth and final step lies in the discovery that the myriad situations that are thus carefully defined and treated give a result which is either the same or entirely compatible with Colorado statutes or decisions. The reason that Article 9 makes little change in the substance of law is not true in many states; it is true in Colorado for two reasons. In the first place, Article 9 is not intended to make a change in public policy. Thus, the retail installment sales acts, usury laws, and small loan laws are not affected and many vary from state to state. The second reason why the changes in Colorado law are minimal is because we have been favored by enlightened, flexible, and workable security laws which are in large part themselves incorporated into the fundamental principles of the uniform commercial

code. Colorado is already familiar with the concept of the floating lien on inventory, the use of intangibles as security under the Act for Assignment of Accounts Receivable; and even in the early days, Colorado adopted a definition of a "chattel mortgage" to embrace a variety of devices intended to operate to give security. Not all states have been so fortunate.

It should not be concluded that because Colorado is favorably positioned with respect to its existing security laws, that Article 9 is unnecessary. Rather, we are fortunate that the adoption of Article 9 can be so easily affected without fundamental changes in our substantive law. The advantages of adopting Article 9 in place of the present conglomeration of statutes include the following:

1. The adoption of a single system makes possible the assembling of a variety of security laws in the one article with a reasonable assurance of consistent application. Moreover, the code goes beyond our present law to provide a framework for the economic use for security purposes of intangible interests which are only now coming to be recognized as important property interests in our economic system.

2. Secondly, the code does away firmly, once and for all, with confusion resulting from doctrines concerning title as applied to security transactions. The question of title may be retained in property transactions, taxation, or elsewhere as a valid concept, but in security law the rights of the debtor or secured party are to be determined without ancient or technical concepts of title to cloud the results.

3. In the third place, Colorado will benefit from a code which is fundamentally the same both here and in neighboring states. Already twenty-nine states have adopted the code and undoubtedly within the next few years the code will be as pervasive a feature of law as the first negotiable instrument law. Colorado has not needed to be in the vanguard with respect to the uniform commercial code, but neither should we close our eyes to the advantage of uniformity in commercial and security transactions between ourselves and other states if we aspire to a position of importance in commerce and banking as a distribution center. Kansas alone of our near neighbors remains aloof from the code.

4. A fourth advantage to Article 9 lies in the fact that definite answers are given in areas which have not in all cases been the subject of court decision or specific statute. The negotiable instruments law was a blessing in providing a codification of commercial law in an area in which uniformity was important. Article 9 is a more complete system than our prior statutes and decisions, and lawyers will have less difficulty in finding specific answers within its corners than was true previously.

5. Finally, a distinct advantage lies in the simple and clear-cut provisions for foreclosure. Again, the practice is not greatly different from that which we have commonly known. In Mr. Hellerstein's book on chattel mortgages, he has heretofore cautioned of the advisability that foreclosures be handled through court proceedings where substantial amounts are involved, and probably many

many attorneys have shared concern in the handling of foreclosure sales without benefit of statute and with little certainty as to the sufficiency of publication or the presumption of finality to be attached to the sale's price. This uncertainty is gone and at the same time rules in Article 9 provide for the protection of all possible interests while permitting self-help procedures.

To illustrate or explain item-by-item the advantages of Article 9 would duplicate at length the article itself. The advantages of its adoption are compelling. The only reluctance is the necessity of learning new definitions and of mastering a new statutory framework. Time will resolve this problem and the advantages of the code will favor the state's economy, doubtless for generations to come.

ARTICLE 10 - EFFECTIVE DATE AND REPEALER

The tenth and final article of the code contains sections fixing the effective date, the repeal of specific statutes such as those listed on page 11 above, a general repealer section, and a specific mention of some laws which are not intended to be repealed, such as the Uniform Act for the Simplification of Fiduciary Security Transfers.

States which have already adopted the uniform commercial code have fixed effective dates which generally were from one to two years after the time of adoption. If the Colorado General Assembly adopts the code in 1965, the effective date should be sufficiently in the future to permit the entire commercial and legal community to learn its provisions, modify their business and legal forms, and be prepared for the changes which will occur.

Since the uniform commercial code will be a civil law, the criminal penalties relating to compliance with various provisions of the warehouse receipts laws, chattel mortgage laws, and other laws will be presented in a companion bill.

Provisions relating to fees to be charged for filing various instruments as required under the provisions of the code will likewise be presented in a companion bill.

APPENDIX C

REASONS FOR THE CODE

(Adapted by Colorado Bar Association Committee on Uniform Commercial Code from Similar Report Prepared for State of Illinois)

There are three basic reasons why the uniform commercial code should be enacted in Colorado.

The first is that in some areas of commercial law Colorado is virtually "lawless." The rules governing these increasingly important areas are neither settled nor known. In addition, many other areas of commercial law have no decisional or statutory base. No commercially important state can afford so much uncertainty as to applicable law.

The second basic reason is that the original uniform acts which govern much of Colorado commercial law were promulgated prior to 1910 and reflect the technology and commercial practices of the nineteenth century. Some of the original uniform acts are inconsistent in policy with others. The code modernizes and simplifies the law, particularly with respect to secured transactions, in the light of current commercial need and makes consistent the policies underlying commercial law.

Finally, today there is no uniformity among the states except among the 30 jurisdictions that have already adopted the code. The only hope of national uniformity lies in the code. With an ever narrowing world and an ever increasing interstate and international business, national uniformity of commercial law is essential. The code, moreover, contains many rules of conflict of laws which simplify and make certain for enacting jurisdictions the rules of law which are to be applied in particular interstate and international transactions.

The elimination of uncertainty as to commercial law, its modernization and simplification and the making of commercial law uniform throughout the nation necessarily expedites and lowers the legal cost of doing business. The code does all of these and should, therefore, be enacted in Colorado

The code represents the first concerted and avowed effort to make the commercial law uniform not only among the several states but internally as well. Solutions of comparable problems in the separate articles were brought together for comparison; they had to conform unless differences could be justified functionally.

The older uniform acts in the commercial field have made great contributions. However, four of those acts are more than fifty to sixty years of age. Certainly the time for their re-examination has come and the code is the result of that re-examination. Perhaps no one who has worked upon it is completely happy with every provision. In many parts it is necessarily a compromise.

For these reasons and others more fully set forth in our analysis of the separate articles the code provides a system of commercial law better suited to our times and much superior to that provided by existing multifarious statutes and uncertain common law. We believe we should claim these advantages for today instead of seeking forever a theoretical perfection unlikely to be achieved.

Scope of the Code

The code covers practically all of the commercial law: sales of personal property, commercial paper (notes, checks, drafts), bank collections and the relationship of bank with customer, letters of credit, bulk sales, documents of title (bills of lading, warehouse receipts, air bills and the like), investment securities (share certificates, debentures, bearer and registered bonds and other investment paper), the entire field of security in personal property (now known as pledges, chattel mortgages, conditional sale contracts, trust receipts, factor's lien, assignment of accounts receivable). In large degree the code preserves and continues the law as it is today, both common law and statutory, but it also makes changes in substance in each of the many areas it covers. It clarifies the law where it is now uncertain, and it provides answers with respect to matters of commercial law not now readily found. Each of the nine articles except Article 5, Letters of Credit, replaces one or more Colorado statutes, including some of the uniform acts in the commercial field.

How the Code Affects Particular Groups of Individuals and Business

The uniform commercial code is not, of course, "all things to all men." Nevertheless, its advantages reach all people with legitimate interests who have contacts with the commercial law. It not only seeks uniformity among the several states by widespread adoption, but it achieves a uniformity within the state among all branches of the commercial law, a uniformity not consciously sought in the past nor completely achieved. The code simplifies and clarifies the law and provides a host of answers which cannot be found with certainty today.

It is not revolutionary but on the other hand it modernizes the law in the light of the experience of over half a century of unprecedented commercial growth since several of our major acts were promulgated.

The code was not prepared by or for any group or class. In fact, it is probable that never before in the history of legislation have so many able people worked so long in so earnest an effort to seek out every legitimate interest and need, to reconcile every conflict of view and to draft an act which will meet these needs satisfactorily and at the same time have a fair prospect of widespread adoption.

Neither is the code a collection of "special privileges." However, in addition to the general advantages of clarity and certainty which accrue to all, there are some provisions of particular interest to certain groups and these we shall endeavor to illustrate, but not to exhaust. These are: The Consumer; The Man with a Bank Account;

The Manufacturer; The Distributor; The Retailer; The Farmer; The Insurance Company; The Security Dealer, Investment Broker and Issuing Corporation; and The Credit Manager.

The Consumer

Almost all persons, natural or artificial, are consumers. The group includes the bank president, the very apotheosis of business acumen, and the unskilled worker who is generally not well versed in business matters. Almost all consumers have contact with the commercial law with respect to sales. Many will continue under the code, as they do today, almost unaware of the law of sales. However, if they seek guidance in advance of action they will find in the code a scheme of things worked out more completely and presented with greater clarity than in the law today. They are more likely to find a solution to their problem arrived at with due respect for fair play for all parties then under present law.

The code frowns upon the unconscionable contract. There is, of course, nothing necessarily unconscionable about selling an article without warranty of any kind but there is if the buyer is not made aware of the fact that the transaction is upon that basis. The code requires that any disclaimer of warranty be made much clearer than does the present law.

The code makes it clear that the warranty runs both to members of the family and to the guest and as proposed in Colorado to any person who may reasonably be expected to use, consume or be effected by the goods. If the dinner guest is the one who bites on the concealed tack in the bread or the ground glass in the jar of baked beans it should be a comfort to both host and guest that the latter has the benefit of the immediate seller's warranty and is not remitted to uncertain recourse against the manufacturer in a difficult negligence action.

If a buyer makes known his needs and relies upon the seller's skill and judgment to supply an article to meet them, there is an implied warranty that the article is suitable for the purpose. Unfortunately, under present law there is a provision which seems to invite the seller's defense that there is no warranty if the purchaser requests an article bearing a "patent or trade name." The code omits this unfortunate suggestion.

The consumer will profit by the simplification of the process by which he can give security in the personal property he buys and by the clear spelling out of his rights and duties on default. Under present law, because of conflicting and unnecessary complications in the formalities required to make the security good against third parties, the secured party too often loses his security by an inadvertent slip which it is humanly impossible always to avoid. The buyer's levying creditor may gain a windfall, or a purchaser to whom the buyer wrongfully has resold may take free of the security interest although the means to discover it were at hand, but the debtor himself does not profit by the secured party's loss for he remains liable in any case. Moreover, debtors as a class must pay the increased cost of such financing. The code not only reduces the formalities to a minimum but it provides that

even in case of a slip the creditor and purchaser with actual knowledge of the security interest cannot take advantage of the slip, as under some circumstances they can under the law of Colorado today.

The Man with the Bank Account

All who use checks, either by issuing them or receiving them, will profit by the greater certainty under the code of the rules under which the check moves from bank to bank in the collection process.

The right of the drawer of a check to stop payment is recognized under present law but in some states the banks have exacted from their customers a promise not to hold the bank liable if it overlooks the stop order. The code makes such an agreement invalid as a matter of public policy whether supported by consideration or not. At the same time, in fairness to the bank which overlooks the stop order, it subrogates the bank to the rights of the person it has paid; this will often avoid an unjust enrichment of the drawer at the bank's expense.

The Manufacturer

The manufacturer gains substantially from the improved law of sales, both with respect to his purchases of raw materials and with respect to his sales of finished products. Our present sales act, now half a century old, was framed more in terms of the single sale. In contrast, the code visualizes a continuous flow of goods in commerce.

If a manufacturer learns before the date for delivery that his supplier, in breach of contract, will not deliver at the appointed time, he may contract with others for his supply. This he may do under present law and under the code. However, there is a difference: under present law the damages he will recover for the breach will be determined by the market price at the time set for delivery whereas, under the code, it is the cost of "cover" at the time he contracted for it which is to govern. Under present law his purchase of "cover" is somewhat a gamble. Under the code the wisdom of his action is weighed as of the time he acted.

The code provides a simple system for giving security in inventory with formalities reduced to a minimum. It allows the manufacturer to give a general security interest in his shifting stock of inventory presently owned or after-acquired. On the other hand, it does not prevent someone else from obtaining a first lien on goods he has financed, though the party with the general lien is entitled to notice of the purchase money security interest. As a matter of fact, a particular advantage of the code for all concerned inheres in its specific provisions dealing with the relative priority of liens of various kinds and with the extent of validity of liens obtained in other states on property subsequently brought into a code state.

The manufacturer benefits also because, if need be, he can obtain reliable security in his product in the event he finances purchases by his wholesale and retail distributors.

The Distributor

Like the manufacturer, the distributor benefits from the modernization of the law both as one who gives and as one who takes security. Both distributor and manufacturer, if they market their products and wares in more than one state, will gain from the uniformity which will result from wide adoption of the code. Today, there is less uniformity with respect to security than in any other field of the law. Consider for example a company which manufacturers farm implements and distributes them in every state. It has found that compliance with the varying requirements of the 50 states with respect to chattel mortgages, conditional sales, trust receipts, factor's liens and other security devices poses a riddle which is almost insoluble. As a result, companies in that position are most enthusiastic supporters of the code.

The Retailer

The retailer, like all who buy or sell goods, will gain from the improved law of sales. Of the 111 sections in Article 2, Sales, 37 have no prior statutory counterpart. The code, therefore, answers, roughly, 50 percent more questions than our present sales act and it does so in the light of over a half century of experience under the older act.

Like the manufacturer and the distributor, the retailer profits from a system, effective and simple, by which in a single device he may give security in inventory and equipment, presently owned and after-acquired. If goods he has sold are returned to him, the security interest can reattach without question.

The security interest may cover the proceeds of his sales, whether simple book accounts for unsecured sales or a reserved security interest in what he has sold. If he then sells the reserved security interest and the debt it secures (called by the code "chattel paper") the code provides a clear system of priorities between the secured party with an interest in "proceeds" and the purchaser of the "chattel paper." Many of these questions cannot be solved with assurance under present law.

The Farmer

The farmer, also, is continuously engaged in commerce, as a buyer and seller of goods and a borrower of money. Thus he, too, has an interest in the clarification and improvement of the law of sales, bank deposits and collections and security devices. Moreover, he will benefit particularly from provisions of the code which liberalize and simplify security interests in farm equipment, feed, livestock and crops and these security documents continue to be filed locally at his own county seat, convenient to him. Like other borrowers who give security to obtain a loan, he will find increased protection under the code.

The Insurance Company

The code does not deal with insurance companies as such and they benefit only as others do who come into contact with the commercial law. Insurance companies hold vast quantities of investment securities and the stock companies are issuers of stock certificates. In both capacities they benefit from a modernized system of handling transfers of security paper, as indicated briefly in the next section. Insurance companies issue and receive checks and drafts in enormous quantities and will derive benefit from an improved and better regulated bank collection system.

Security Dealer, Investment Broker and Issuing Corporation

Article 8 provides a modernized and improved system of handling all transfers of investment securities. The bearer bond has not been confortable within the confines of the negotiable instruments law. The stock transfer act governs transfers of stock certificates only. The registered bond and other registered securities have been left pretty much without statutory guidance. Because all of these are similar with respect to transfer problems they are gathered together in Article 8. For the first time there is a comprehensive treatment of the whole transfer problem. All who handle investment paper should benefit materially from increased certainty and simplicity.

The Credit Manager

In addition to many of the things already mentioned under other headings, there are other improvements in the code which will be recognized by credit managers of business concerns. For instance, pitfalls in the inception of a sales transaction are removed by simplification of the requirement of a memorandum satisfying the statute of frauds, recognition of an offer binding for a reasonable period without special consideration, provisions regarding the effect of confirmations between merchants, provisions authorizing and describing the effect of open price terms, and other innovations in the law tailored to reasonable business practices and expectations. A seller is given limited protection in the event of insolvency of the buyer shortly after delivery of the goods and before they have been paid for, and a buyer is given similar protection in the event of insolvency of a seller occurring shortly after receipt of advances but before delivery of the goods.

General creditors will benefit from the requirement of a more adequate notice in advance of bulk sales; and the concealed ownership of goods held on consignment for sale, as well as the secret lien of an assignee of accounts receivable, will be outlawed by the requirement of public filing. On the other hand, the notice type of filing authorized by the code will be far simpler and less expensive than is the recordation of chattel mortgages today. Realization on security in the event of default will be standardized and simplified and better suited to the protection of the interests of all parties.

APPENDIX D

The Corporation, Banking and Business Law Section of the Colorado Bar Association is governed by a council, the officers and members of which are:

Harl G. Douglass	Boulder	Chairman
Julius Friedrich	Denver	Vice Chairman
David J. Clarke	Denver	Secretary
Charles E. Grover	Denver	Immediate Past Chairman
Robert W. Bartley	Pueblo	Member
Louis A. Hellerstein	Denver	Member
Robert F. Welborn	Denver	Member
Thomas J. Harshman	Grand Junction	Member

The Corporation Section, during the fall of 1963, created a Committee on the Uniform Commercial Code. Approximately 60 members of the section were appointed to that committee.

The Uniform Commercial Code Committee has had an executive committee and three subcommittees. The officers and members of the executive committee and the chairmen of the subcommittees who worked on each of the several articles of the Code are:

David J. Clarke, Chairman
Charles A. Baer, Vice Chairman
Thomas J. Kerwin, Secretary
H. Harold Calkins, Subcommittee Chairman on Articles 2, 6 and 7
Charles H. Haines, Jr., Subcommittee Chairman on Article 9
Lester R. Woodward, Subcommittee Chairman on Articles 3, 4, 5 and 8
Bruce Buell, Chairman of the Section's Committee on Banking
Louis A. Hellerstein, Chairman of the Section's Committee on Secured Transactions
Alec J. Keller, Chairman of the Section's Committee on Securities

The members of the subcommittees who made the initial analyses of the provisions of the Uniform Commercial Code (and without whose efforts the task would never have been accomplished) were:*

ARTICLE 2 - SALES

H. Harold Calkins, Chairman

Robert S. Gast, Jr.
Gilbert L. McSwain
Hugh J. McClearn
Edward A. Walsh
James C. Seccombe, Jr.
Gail E. Oppenner
George B. Brennan
John C. Corbridge
Clayton Knowles

* Articles 1 and 10 were handled by the Executive Committee

ARTICLE 3 - COMMERCIAL PAPER

Lester R. Woodward, Chairman

Don Sears
Ira E. Tanner
John W. Low
William P. Waggener
Ben D. Sublett
Robert Yegge

ARTICLES 4 and 5 - BANK DEPOSITS AND COLLECTIONS and LETTERS OF CREDIT

Lester R. Woodward, Chairman

Don Sears
James C. Owen, Jr.
John S. Potter
William R. Kelley
George Gibson
J. Peter Lindsay
Fred Pattridge

ARTICLES 6 and 7 - BULK TRANSFERS and WAREHOUSE RECEIPTS, BILLS OF LADING, etc.

H. Harold Calkins, Chairman

Elmer P. Cogburn
Bradford Wells
Jack B. Toll

ARTICLE 8 - INVESTMENT SECURITIES

Lester R. Woodward, Chairman

Charles E. Henry
Sanford Hertz
Ernest Lohf

ARTICLE 9 - SECURED TRANSACTIONS

Charles H. Haines, Jr., Chairman
Stephen A. Hellerstein, Secretary

R. Dale Tooley, Chairman, Part 2
Robert D. Charlton, Chairman, Part 3
Willis Carpenter, Chairman, Part 4
Douglas R. State, Chairman, Part 5

Edward M. Sears
Arthur J. Seifert
Wm. Hedges Robinson, Jr.
J. Albert Sebald
Robert G. Wilson
Keith Anderson
James Robb
Paul DeF. Hicks, Jr.
Michael Vaggalis
Robert J. Shanstrom
D. Monte Paseo
Richard Wohlgenant
Stanton D. Rosenbaum
Robert F. Thompson
John D. Knodell, Jr.

APPENDIX E

WHY THE COMMERCIAL CODE SHOULD BE "UNIFORM"

By William A. Schnader

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WHY THE COMMERCIAL CODE SHOULD BE "UNIFORM"

WILLIAM A. SCHNADER*

Subsection (2) of section 1-102 of the Uniform Commercial Code states that:

"(2) Underlying purposes and policies of this Act are

"(a) to simplify, clarify and modernize the law governing commercial transactions;

"(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

"(c) to make uniform the law among the various jurisdictions."

Business men, lawyers, legislators and legislative draftsmen have no difficulty in understanding the purposes and policies of the Code as stated in clauses (a) and (b).

Everybody can understand why the law governing commercial transactions should be simplified, clarified and modernized, and why there should be continued expansion of commercial practices in this country through custom, usage and agreement of the parties.

Therefore, one would think that if the hundreds of thousands of hours of time and the hundreds of thousands of dollars of money which went into the drafting of the Uniform Commercial Code had produced a "model" Commercial Code, to serve as the base for any state desiring to improve its statutory law governing commercial transactions, the states would have enacted it immediately.

The truth is that the busy judges, law professors and practicing lawyers who contributed the hundreds of thousands of hours, and the foundations and business concerns that contributed the hundreds of thousands of dollars, would never have contributed their time or their money for the preparation of a "model" Commercial Code.

Viewed from this standpoint, the most important of the underlying purposes and policies of the "Uniform" Commercial Code is the last, namely, "to make uniform the law among the various jurisdictions."

*Partner, Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.; Chairman, Permanent Editorial Board for the Uniform Commercial Code, American Law Institute, Philadelphia, Pa. A.B. 1908, LL.D. 1931, Franklin and Marshall College; LL.B. 1912, LL.D. 1963, University of Pennsylvania; LL.D. 1952, Temple University.

Here, too, we get general agreement among businessmen and lawyers that theoretically the law governing commercial transactions should be uniform among every American jurisdiction.

In this country there are only two possible methods of obtaining complete uniformity of the statutory law on any subject. One method is the enactment of a law by Congress. The other method is by adoption of the same statute by fifty states and the District of Columbia.

The difficulty with the first method, when we are considering the regulation of commercial transactions, is that Congress does not have complete power to deal with such transactions. It may deal with them only if they are in or affect interstate commerce. All of us know that the United States Supreme Court has found it possible to say that almost every commercial transaction "affects" interstate commerce, but even so there is a segment of these transactions which could not be said to have the slightest effect upon commerce between the states. Thus, to give Congress power to enact a statute like the Uniform Commercial Code which would be universally applicable throughout American jurisdictions, a constitutional amendment expanding the power of Congress to regulate commerce would be necessary.

If our state laws regulating commercial transactions are not made uniform in substantially all respects within the next few years, it is not unlikely that a movement may be initiated to have the necessary constitutional amendment proposed and adopted.

More than seventy years ago, in 1892, the National Conference of Commissioners on Uniform State Laws was organized because it was felt that there were certain areas of statutory law which needed to be uniform throughout the United States, and because it was felt that legislative power should not be further concentrated in the hands of the federal Congress. One of the subjects upon which there was general agreement that there should be uniformity was the law of commercial transactions. Therefore, it is not surprising that in the very first year of its existence the Conference promulgated an act on notes, checks, drafts and bills of exchange, and in 1896 it promulgated the Negotiable Instruments Law, a much more pretentious act dealing with commercial paper.

Promulgated in 1906 were the Uniform Sales Act and the Uniform Warehouse Receipts Act, in 1909 the Uniform Bills of Lading Act and the Uniform Stock Transfer Act, and still later, the Uniform Conditional Sales Act and the Uniform Trust Receipts Act.

Of these seven important acts regulating commercial transactions, only three have been enacted by every American jurisdiction, these being the Uniform Negotiable Instruments Law, the Uniform Warehouse

Receipts Act and the Uniform Stock Transfer Act. However, it required twenty-eight years to have the N.I.L. enacted by all the states, fifteen years to accomplish the same result with the Uniform Warehouse Receipts Act and forty-seven years to have the Uniform Stock Transfer Act adopted in every jurisdiction.

The Uniform Sales Act was promulgated in 1906, but after almost sixty years it has not as yet been universally enacted by the states, either separately or in modified form as Article 2 of the Uniform Commercial Code.

On the surface it might seem that to have the law relating to negotiable instruments uniform throughout the United States after twenty-eight years was a notable achievement. That might be so except for two facts. One fact is that non-uniform amendments were made by this state and that state, without consultation with or the approval or consent of the other states which had the N.I.L. on their statute books. The other fact is that in 1940, by actual count, 80 of the 198 sections of the N.I.L. had different meanings in different jurisdictions because their highest courts had construed them differently.

There is no known way in which the Supreme Courts of our American states can be induced, in construing a statutory provision, to follow the decisions of the highest courts of other states construing the same provision. Thus, it is incumbent upon the draftsmen of uniform acts to exert more than ordinary efforts to use clear and unambiguous language. That is the surest way to avoid divergent interpretations of the same language by different courts. However, in the drafting of the Uniform Commercial Code another step was taken to avoid this undesirable result. Careful comments were made explaining the history and purpose of each section. These comments are "official" because they were prepared, reviewed and adopted by the same persons who prepared, reviewed and adopted the text of the Code.

It was very largely because of the existing non-uniformity of the Negotiable Instruments Law as it had been modified either by legislative amendments or "judicial legislation" that in 1940, the proposal was made that a Uniform Commercial Code be prepared and promulgated in an effort to make the law regulating commercial transactions really uniform throughout the states.

Also, there were conflicting provisions in the Uniform Sales Act, the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act. Such a situation was undesirable and required attention.

Thus it was that in the fall of 1940, when the National Conference

of Commissioners on Uniform State Laws met in Philadelphia, the writer, who was then its President, said:[1]

> "Our splendid commercial acts were prepared and adopted by this Conference many years ago. Many changes in methods of transacting business have taken place in the meanwhile.
>
> "In addition, they were adopted and recommended piecemeal. In a number of respects, there is overlapping and duplication, and in some instances, inconsistency, in dealing with negotiable instruments, bills of lading, warehouse receipts, stock transfers, sales and trust receipts.
>
> "Could not a great uniform commercial code be prepared, which would bring the commercial law up to date, and which could become the uniform law of our fifty-three jurisdictions, by the passage of only fifty-three acts, instead of many times that number?"[2]

The National Conference answered the question in the affirmative but it found that the project was too great for it alone to handle. Fortunately, it was able to obtain the cooperation of The American Law Institute. Funds were subscribed and the work was undertaken and conducted as the major project of both organizations during a period of approximately seven years.

The Code was finally promulgated at a joint meeting of both organizations in New York City in September, 1951. Its first enactment was by the Pennsylvania Legislature in April, 1953, and to date, May 1, 1963, it has been enacted by twenty-two additional states.[3]

When the Uniform Laws Annotated edition of the Code came out in August, 1962, only eighteen states had enacted the Code, and thus it was impossible in that edition to call attention to the variations in the text of the Code which have been made by the five states which have thus far enacted it this year.

To show the lack of understanding of legislators and legislative draftsmen of the importance of uniformity in a monumental Code intended to regulate all commercial transactions in the United States, we shall call specific attention to the variations made in the eighteen

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[1] 1940 Handbook of the National Conference of Commissioners on Uniform State Laws, 58 (1940).

[2] The 53 jurisdictions include the District of Columbia, Alaska, Hawaii, the Philippines and Puerto Rico. Granting of independence to the Philippines reduced the number to 52.

[3] For a fuller history of the preparation of the code see the edition of the Code published by Edward Thompson Company of Brooklyn, New York, as a part of Uniform Laws Annoted, at pages LXIII and LXXI. All citations of the Code hereafter will be to that work which, according to the publisher, is to be cited as Uniform Commercial Code (ULA), but which we shall cite as UCC, ULA.

states that had enacted the Code prior to January 1, 1963, in Article 3 on Commercial Paper, which largely takes the place of the N.I.L.

This will demonstrate more vividly than could be demonstrated in any other way the difficulty of obtaining complete statutory uniformity in the law regulating commercial transactions in this country, as long as the states are permitted to deal with this area of the law, unless a different attitude can be instilled into our legislators and into our state legislative draftsmen.

Parenthetically, let me state that the question which this article is intended to answer has not been overlooked. It will be answered later.

As promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, Article 3 of the Code contains 79 sections. As indicated in 1 UCC, ULA, pages 359-568 only 58 of the 79 sections were uniformly adopted in the eighteen states. Incidentally, the reader should have in mind the states about which we are speaking. They are, in the order in which they enacted the Code, Pennsylvania, Massachusetts, Kentucky, Connecticut, New Hampshire, Rhode Island, Wyoming, Arkansas, New Mexico, Ohio, Orgeon, Oklahoma, Illinois, New Jersey, Georgia, Alaska, New York and Michigan. Included in these states are, with several notable exceptions, the most important states in the Union as far as concerns commerce, finance and industry.

Of the twenty-one sections of this most important Article which were not uniformly adopted, a number suffered at the hands of what may be called statutory tinkerers. It must be remembered that the Editor-in-Chief of the Code was the late Karl N. Llewellyn, who in addition to being probably the country's foremost authority on commercial law, was one of the most accomplished and expert statutory draftsmen and critics our country has ever produced. Every line of the Code as promulgated had Karl's personal approval. Some of Karl's associates were equally adept and expert in statutory draftsmanship. For these reasons, to put it mildly, it takes a peculiar type of courage for an assistant in some legislative drafting agency (or even his chief) to presume that he has found a reason for changing the language of the Official Text and thus to destroy the complete uniformity of the Code.[4]

[4]This criticism has no application to modifications due to local procedural differences. It does apply to legislative drafting agencies which refuse to depart from their peculiar local drafting policies. Uniformity is impossible in a farflung field of law such as the regulation of commercial transactions unless every state is willing to yield some points (which ordinarily might be deemed important) in order to conform to the majority.

Now, let us look at the changes made by some states in Article 3.

The very first section of Article 3, Section 3-101, is entitled "Short Title." It reads:

> "This Article shall be known, and may be cited as Uniform Commercial Code—Commercial Paper."

Ohio omitted this section entirely, and in Oregon the words "shall be known and" were omitted. 1 UCC, ULA 361.

It must be conceded that these omissions are minor, but they do indicate that the draftsmen who were responsible for them did not realize the importance of uniformity. Certainly, the inclusion in the Uniform Commercial Codes of both states of the section as written would have been completely harmless.

Nothing can justify the result, namely, that sixteen pre-1963 Code states include in their Codes this section as drafted by the Code's experts but that two states made these unnecessary and insignificant changes.

The next section in which unauthorized variations were made is section 3-102, entitled "Definitions and Index of Definitions." Here we find that changes were made in the Codes of Arkansas, Connecticut, Ohio and Oklahoma. 1 UCC, ULA 365.

Subsection (2) of Section 3-102 begins, "Other definitions applying to this Article and the sections in which they appear are," and then follows a list of definitions, all contained in Article 3.

Subsection (3) of the same section states that—"The following definitions in other Articles apply to this Article" and then lists a number of definitions contained in Article 4.

Arkansas and Oklahoma felt is necessary to include in subsection (2) "Documentary Draft" which is listed in subsection (3) as appearing in section 4-104. This was clearly unnecessary as subsection (3) states that the definitions there listed "apply to this article."

In Connecticut and Ohio there was a little careless proofreading. Several references were to the wrong section.

Now we come to a different type of amendment, but before discussing it, it is necessary to say a word about the Permanent Editorial Board for the Uniform Commercial Code.

When the practice of making non-uniform amendments seemed to be becoming general in state after state, it was determined, if financial support could be obtained, to create a Permanent Editorial Board for the Uniform Commercial Code, and to ask those in charge of campaigns to have the Code enacted in non-Code states to withold

making unauthorized amendments until the proposed amendments could be submitted to and passed upon by the Board.

The necessary financial support was obtained, an agreement was made by The American Law Institute and the National Conference of Commissioners on Uniform State Laws for the creation and functioning of the Board, and three sub-committees were appointed to study and examine any proposals made for the amendment of the Code, and also to examine the unauthorized amendments already made in Code states and to approve or disapprove them.

The assignment of Subcommittee No. 1 is Articles 1, 2, 6 and 7 of the Code; the assignment of Subcommittee No. 2 is Articles 3, 4, 5 and 8; and, to Subcommittee No. 3 is assigned Article 9.

The Permanent Editorial Board organized in May 1962, its subcommittees worked assiduously over the summer of 1962, and the Board had a three-day meeting in Philadelphia in the middle of October, after which it made its Report No. 1. In this Report a number of amendments were approved and promulgated, but a far greater number were disapproved.

This brings us back to the consideration of amendments to Article 3.

New York amends subsection (1)(c) of section 3-105 of the Code by adding certain words which would make a substantive difference in that subsection. 1 UCC, ULA 373.

In its October 1962 Report, the Editorial Board approved this amendment. Thus, the only criticism of New York's action was that New York acted individually and without first consulting the Editorial Board which had drafted the Code.

New York also amended sections 3-107(2), 3-112(1)(b)(c), 3-304, 3-415, 3-504(4), 3-701 and 3-804.

Two changes were made in subsection 3-107(2), both of which were rejected by the Editorial Board in its Report. The Board gave its reasons for rejection at length. 1 UCC, ULA, 379, and Report, page 71.

Section 3-112 is entitled "Terms and Omissions not Affecting Negotiability." 1 UCC, ULA 389.

The New York changes, in subsections (1)(b) and (c), were not approved by the Permanent Editorial Board, but the Board recommended that subsection (1)(b) be modified in a different way from that in which New York had amended it. Report, page 20.

Section 3-304—"Notice to Purchaser"—was amended by adding an entirely new clause (7) at the end of the section. 1 UCC, ULA 440.

The added clause practically reinstated section 56 of the N.I.L. in the Code, a section which had produced a tremendous amount of litigation and was intentionally abandoned by the Code's draftsmen.

The Permanent Editorial Board saw no reason for reversing a decision which had been deliberately made. Report, page 74.

New York added to Section 3-415—"Contract of Accommodation Party"—a new subsection (6). 1 UCC, ULA 497.

The added clause would have restored the warranty obligations of an accommodation indorser formerly imposed by sections 65 and 66 of the N.I.L.

The policy decision set forth in the Official Text of the Code was carefully considered and the Permanent Editorial Board was not persuaded that it should reverse the previous decision. Report, page 74.

Section 3-504(4) was amended by inserting at the beginning a clause which does not appear in the Official Text. The clause refers to section 4-204. 1 UCC, ULA 526.

The Editorial Board neither approved nor disapproved of this change.

Section 3-701—"Letter of Advice of International Sight Draft"—was amended by deleting entirely subsection (3). 1 UCC, ULA 558.

This subsection is:

> "(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account."

The Permanent Editorial Board rejected this deletion stating that "insufficient grounds have been advanced to delete the subsection." Report, page 76.

Section 3-804—"Lost, Destroyed or Stolen Instruments"—was amended by changing the word "may" to "shall" in the sentence, "The court may require security indemnifying the defendant against loss by reason of further claims on the instrument." 1 UCC, ULA 565.

The Permanent Editorial Board rejected this change on the ground that courts should have discretion whether or not to require security. Report, page 77.

Connecticut in 1961 amended section 3-106 of its Code. 1 UCC, ULA 377. That section is entitled "Sum Certain."

Section 3-106 begins, "(1) The sum payable is a sum certain even though it is to be paid" and then follow five situations which do not

prevent the sum payable from being a sum certain. To these situations Connecticut added a sixth clause reading as follows:

> "(f) with provisions for payment by the maker of taxes levied or assessed upon the instrument or the indebtedness evidenced thereby."

This amendment apparently escaped the attention of the Permanent Editorial Board as its Report neither approves nor disapproves it.

Oklahoma amended section 3-110, entitled "Payable to Order," by inserting the word "there" in subsection (1)(g) so as to make the last part of the subesction read—"and may be indorsed or transferred by any person there thereto authorized." We cannot believe that this was an intentional amendment. See 1 UCC, ULA 386.

Arkansas amended sections 3-118(a) and 3-501(2)(b). Section 3-118 is entitled "Ambiguous Terms and Rules of Construction." Subsection (a) as drafted by the sponsors of the Code reads (1 UCC, ULA 401):

> "Where there is doubt whether the instrument is a draft or a note the holder may treat it as either . . . ."

The draftsman apparently thought that he would improve this language by adding the word "drawn" after the word "draft"!

Section 3-501 is entitled "When Presentment, Notice of Dishonor, and Protest Necessary or Permissible." 1 UCC, ULA 515.

Arkansas amended subsection (2)(b) so as to make it identical with subsection (1)(b). This was obviously an error.

For this reason, it was rejected by the Permanent Editorial Board. Report, page 75.

Connecticut, Illinois, Massachusetts, New York and Rhode Island amended section 3-122 in substantially the same manner, and the Permanent Editorial Board approved the change in its October 1962 Report. Report, page 21. See 1 UCC, ULA 409-410.

Wyoming rewrote subsection (3) of section 3-202, entitled "Negotiation" and omitted subsection (4) entirely. 1 UCC, ULA 415.

The rewriting of subsection (3) was disapproved by the Permanent Editorial Board (Report, page 73) as was the deletion of subsection (4) which reads:

> "(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement."

The Permanent Editorial Board pointed out that this subsection resolved a conflict in decisions under the N.I.L. and that for this purpose it was very useful. Accordingly, it rejected the Wyoming amendment. Report, page 73.

Arkansas and Oregon made changes in subsection (4) of section 3-206 entitled "Effect of Restrictive Indorsement." 1 UCC, ULA 422.

The Arkansas deviation is merely an inaccuracy, referring to section 3-203 instead of to section 3-302.

The Oregon change would omit a reference to another section in parentheses. These cross references appear throughout the Code for the purpose of making clear the intention of particular provisions. No good reason can be imagined for having deleted this reference.

Rhode Island departs from the Official Text in section 3-207 entitled "Negotiation Effective Although It May Be Rescinded." 1 UCC, ULA 425.

The last sentence of this section is as follows:

> "(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law."

Rhode Island deleted the word "other" before "remedy."

This change was rejected by the Permanent Editorial Board as being merely a matter of style, without any legal significance. Report, page 74.

New Mexico amended section 3-403(2)(b) entitled "Signature by Authorized Representative." 1 UCC, ULA 465.

The amendment consists of inserting the word "not" in such a way as to make the last clause of the subsection meaningless.

Georgia amended section 3-405 entitled "Impostors; Signature in Name of Payee" by substituting the word "Imposter" for "Impostor." 1 UCC, ULA 471. This no doubt was accidental but there *is* a difference in the meaning of the words.

New Mexico and New York amended section 3-412, entitled "Acceptance Varying Draft." 1 UCC, ULA 491.

Subsection (2) reads:

> "The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the continental United States, unless the acceptance states that the draft is to be paid only at such bank or place."

New Mexico substituted the word "and" for "or" as the next to the last word. New York omitted the word "continental."

The Editorial Board approved the omission of the word "continental" and ignored the New Mexico variation. Report, page 23.

Ohio felt it necessary to modify section 3-419 relating to "Conversion of Instrument; Innocent Representative." 1 UCC, ULA 512.

The Official Text refers to "provisions of this act concerning restrictive endorsements." The Ohio draftsman was not satisfied with this but made specific reference by number to four sections of the Code.

Both Kentucky and Oklahoma amended subsection (1)(d) of section 3-601 by substituting the word "security" for "collateral." 1 UCC, ULA 545.

The Permanent Editorial Board rejected this substitution stating that the word should be "collateral." Report, page 76.

Oklahoma amended subsection (1)(b) of section 3-802 by inserting into the subsection an additional sentence. 1 UCC, ULA 562.

The Editorial Board rejected the amendment on the ground that "the additional language is already well recognized as a matter of case law." Report, page 76.

Of the eighteen pre-1963 Code states, five enacted the 79 sections of Article 3 without any variations from the Official Text. These states were Alaska, Michigan, New Hampshire, New Jersey and Pennsylvania.

Five states amended one section of the Official Text. These states were Georgia, Illinois, Kentucky, Massachusetts and Wyoming.

Two states, New Mexico and Rhode Island, changed two sections; two states, Connecticut and Ohio, changed three sections, and three states, Arkansas, Oklahoma and Oregon, changed four sections.

New York felt it necessary to amend nine sections. However, it must be said for New York that a bill enacted by the 1963 legislature has made the New York Code adhere much more nearly to the 1962 Official Text[5] than the New York Act of 1962 conformed to the 1958 Official Text.

Although twenty-five sections of Article 3 were modified, nineteen of these sections were changed by only one state. The largest number of states to make the same amendment was five.[6]

Fifty-four sections (unamended in any of the eighteen states) constitute a little more than sixty-eight per cent of the sections in Article 3. It is true that of the amendments made to the twenty-five modified

[5]The 1962 Official Text is the 1958 Official Text with the amendments promulgated by the Permanent Editorial Board in October, 1962.

[6]We have not included as a change the amendment of § 3-511. There was a typographical error in printing the 1958 Official Text with Comments. This error resulted in the substitution of the word "of" for "or". The seven states which did not catch the error until after their Codes had been enacted were Arkansas, Connecticut, Georgia, Illinois, Massachusetts, Oregon and Wyoming.

sections, some were trivial, some were careless, and some were the result of a misunderstanding of the history and purpose of the section as promulgated by the Institute and the Conference.

The amendments which were trivial may be said to have done no harm but it can be said with equal force that being trivial, they should not have been made. The amendments which were due to carelessness illustrate the importance of having an act of the magnitude of the Code thoroughly proof-read.The amendments made because of a misunderstanding of the history and purpose of the amended provisions ought not to have been made without consulting the original Editorial Board which had supervised the drafting of the Code and which, although not active, was nevertheless available for consultation at all times.[7]

It is too early to give in detail the results of 1963 enactments either of the Code or of amendments to the Code.

We do know that five states which thus far have enacted the Code this year are said to have adopted the 1962 Official Text. And we do know that in a few, but not nearly the entire eighteen, of the states which enacted the Code prior to 1963, bills have either been enacted or are pending to bring the Code up to date by incorporating the officially promulgated 1962 amendments. As this is being written, legislatures are still in session so that it would be futile to try to assess the result of this year's legislation.

Now, finally, we come to the question, Why is uniformity important in our statutory law regulating commerciel transactions?

The answer seems so obvious that it is almost difficult to formulate it.

Today, in the United States, the number of important concerns which transact business in every state is growing every year and the number which transact business in only one state is becoming less and less percentagewise. Writing as long ago as April 1958 in *The Business Lawyer*, Walter D. Malcolm, Esquire, of Boston, stated that:

> "[T]he number of 'items' handled by banks as part of the bank collection process has, since 1900, grown to tremendous proportions. It has been estimated that throughout the entire country banks handle not less than 25,000,000 items every business day. As a matter of fact a rough test, made after that 25,000,000 estimate was made, indicates that the figure is nearer 50,000,000 items per day rather than twenty-five.

[7]The Chairman of the Board was the late Judge Herbert F. Goodrich of Philadelphia from the inception of the Code project until the Editorial Board was succeeded by the Permanent Editorial Board. Judge Goodrich was the first Chairman of the latter Board and the writer is now serving in that capacity.

> "This tremendous volume moving with surprising speed and efficiency from one bank to another within single cities and towns and between cities and towns over state boundary lines has created a set of problems which are in no way satisfactorily handled by the commercial acts of 1900."

Should the sales department of a great manufacturer whose products go into every state be obliged to familiarize itself with the individual Codes of all the states which have enacted the "Uniform" Commercial Code for fear that the supposedly uniform provisions of the law of sales have been tampered with by local draftsmen? Should the officers of a bank in a great metropolitan center which has correspondents all over the United States be obliged to exercise care in dealing with banks in other states which have enacted the Uniform Commercial Code lest they overlook some non-uniform amendment which has been made in a particular state? Does not state individualism in the enactment of the Code destroy much of the value which the Code would otherwise have? And finally, in how many instances are non-uniform amendments made by individual states without consultation with the Code's Editorial Board, of major importance?

To the first two questions the obvious answer is "no"; to the third question the obvious answer is "yes"; and to the final question an examination of the typical article as nonuniformally amended in eighteen states will inevitably lead to the conclusion that none of the differing amendments was really important.

In this last connection, it may not be out of place to mention the fact that Pennsylvania, which is by no means the least important of the fifty states in commercial transactions, has had the Code in force almost ten years and has not found it necessary to make a single unofficial amendment.

The National Conference of Commissioners on Uniform State Laws intends to pursue real uniformity in the statutory regulation of commercial transactions unless and until the task becomes hopeless. States which have the Code on their statute books with a few or many non-uniform amendments will be urged to eliminate those amendments. And the effort to have our entire fifty states enact the Code as drafted with the amendments officially promulgated by the Permanent Editorial Board will continue.

We believe that within a very few years every state will have on its statute books a Commercial Code which will be approximately 75 per cent uniform. However, that will not satisfy those of us who as lawyers see the necessity for uniformity in this area and I fear that it will not permanently satisfy American business.