

L A W S
OF THE
COMMONWEALTH OF PENNSYLVANIA

No. 1
AN ACT

Relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, documentary letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, and secured transactions, including certain sales of accounts, chattel paper, and contract rights; providing for public notice to third parties in certain circumstances; regulating procedure, evidence and damages in certain court actions involving such transactions, contracts or documents, and to make uniform the law with respect thereto.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Article 1

General Provisions

Part 1

Short Title, Construction, Application and Subject Matter of the Act

Section 1—101. Short Title.—This Act shall be known and may be cited as Uniform Commercial Code.

Section 1—102. Purposes; Rules of Construction.—(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

- (2) Underlying purposes and policies of this Act are
- (a) to simplify and modernize and develop greater precision and certainty in the rules of law governing commercial transactions;
 - (b) to preserve flexibility in commercial transactions and to encourage continued expansion of commercial practices and mechanisms through custom, usage and agreement of the parties;
 - (c) to make uniform the law among the various jurisdictions.

(3) In construing and applying this Act to effect its purposes the following rules shall apply:

- (a) Definitions and formal requirements such as those determining what constitutes a negotiable instrument, a bona fide purchaser, a holder in due course, or due negotiation of documents of title are not subject to variation by agreement;
- (b) Except as otherwise provided by this Act the rights and duties of a third party may not be adversely varied by an agreement to which he is not a party or by which he is not otherwise bound;
- (c) The general obligations prescribed by this Act such as good faith, due diligence, commercial reasonableness and reasonable care may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable;

- (d) Provisions of this Act which are qualified by the words "unless otherwise agreed" or words of similar import may be waived or modified by agreement and the absence of such words contains no negative implication;
- (e) Subject to the foregoing subsections and except as otherwise specifically provided in this Act, the effect of provisions of this Act may be varied by agreement;
- (f) The Comments of the National Conference of Commissioners on Uniform State Laws and The American Law Institute may be consulted in the construction and application of this Act but if text and comment conflict, text controls;
- (g) Prior drafts of text and comments may not be used to ascertain legislative intent.

Section 1—103. Supplementary General Principles of Law Applicable.—Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Section 1—104. Construction Against Implicit Repeal.—This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 1—105. Applicability of the Act; Parties' Right to Choose Applicable Law.—(1) Article 1 applies to any contract or transaction to which any other Article of this Act applies.

(2) The Articles on Sales (Article 2), Documentary Letters of Credit (Article 5) and Documents of Title (Article 7) apply whenever any contract or transaction within the terms of any one of the Articles is made or occurs after the effective date of this Act and the contract

- (a) is made, offered or accepted or the transaction occurs within this state; or
- (b) is to be performed or completed wholly or in part within this state; or
- (c) relates to or involves goods which are to be or are in fact delivered, shipped or received within this state; or

- (d) involves a bill of lading, warehouse receipt or other document of title which is to be or is in fact issued, delivered, sent or received within this state; or
- (e) is an application or agreement for a credit made, sent or received within this state, or involves a credit issued in this state or under which drafts are to be presented in this state or confirmation or advice of which is sent or received within this state, or involves any negotiation within this state of a draft drawn under a credit.

(3) The Articles on Commercial Paper (Article 3) and Bank Deposits and Collections (Article 4) apply whenever any contract or transaction within the terms of either of the Articles is made or occurs after the effective date of this Act and the contract

- (a) is made, offered or accepted or the transaction occurs within this state; or
- (b) is to be performed or completed wholly or in part within this state; or
- (c) involves commercial paper which is made, drawn or transferred within this state.

(4) The Article on Investment Securities (Article 8) applies whenever any contract or transaction within its terms is made or occurs after the effective date of this Act and the contract

- (a) is made, offered or accepted or the transaction occurs within this state; or
- (b) is to be performed or completed wholly or in part within this state; or
- (c) involves a security issued or transferred within this state.

But the validity of a corporate security shall be governed by the law of the jurisdiction of incorporation.

(5) The Articles on Bulk Transfers (Article 6) and Secured Transactions (Article 9) apply whenever any contract or transaction within their terms is made or occurs after the effective date of this Act and falls within the provisions of Section 6—102 or Sections 9—102 and 9—103.

(6) Whenever a contract, instrument, document, security or transaction bears a reasonable relationship to one or more states or nations in addition to this state the parties may agree that the law of any such other state or nation shall govern their rights and duties. In the absence of an agreement which meets the requirements of this subsection, this Act governs.

Section 1—106. Remedies to be Liberally Administered.—(1) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential nor penal damages may be had except as specifically provided in this Act or by other rule of law.

(2) Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Section 1—107. Waiver or Renunciation of Claim or Right after Breach.—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 by the aggrieved party.

Section 1—108. Severability.—If any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 1—109. Section Captions.—Section captions are parts of this Act.

Part 2

General Definitions and Principles of Interpretation

Section 1—201. General Definitions.—Subject to additional definitions contained in the subsequent Articles of this Act which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Act:

(1) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreed” or “Agreement” means the bargain in fact as found in the language of the parties or in course of dealing or usage of trade or course of performance or by implication from other circumstances. (Compare “Contract.”)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who buys goods in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker or a person buying goods from a farmer. "Buying" may be for cash or on secured or unsecured credit and includes receiving goods, securities or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total obligation in law which results from the parties' agreement as affected by this Act and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" means an unsecured creditor and includes any representative of creditors including an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the current course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of

the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

- (25) A person has "notice" of a fact when
- (a) he has actual knowledge of it; or
 - (b) he has received a notice or notification of it; or
 - (c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

(26) A person "notifies" another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other party actually comes to know of it.

(27) A person "receives" a notice or notification when

- (a) it comes to his attention; or
- (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications. Notice or a notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has made a contract within this Act.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(32) "Purchase" includes taking by sale, discount, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" mean a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in property which secures payment or performance of an obligation. The reservation by a seller or consignor of property notwithstanding identification of goods to a contract for sale or notwithstanding shipment or delivery is a "security interest." The term also includes the interest of a financing buyer of accounts, chattel paper, or contract rights.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any authentication.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature" means a signature made without actual, implied or apparent authority and includes a forgery.

(44) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for others.

(45) "Written" or "writing" includes printing, typewriting or other intentional reduction to tangible form.

Section 1—202. Prima Facie Evidence by Third Party Documents.—A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Section 1—203. Obligation of Good Faith.—Every contract within this Act imposes an obligation of good faith in its performance or enforcement.

Section 1—204. Time: Reasonable Time; "Seasonably."—(1) Wherever this Act requires any action to be taken within a reasonable time, the agreement may fix any time which is not manifestly unreasonable.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

Section 1—205. Course of Dealing and Usage of Trade.—(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is in fact fairly to be regarded as establishing a common basis of understanding for interpreting their words and conduct.

(2) A usage of trade is any practice or method of dealing currently recognized as established in a particular place or among those engaged in trade or in a particular vocation or trade. Its existence and scope are questions of fact.

(3) The parties to a contract are bound by any course of dealing between them and by any usage of trade of which both are or should be aware and parties engaged in a particular vocation or trade are bound by its usages.

(4) Unless contrary to a mandatory rule of this Act:

(a) A course of dealing or usage of trade gives particular meaning to and supplements or qualifies terms of the agreement.

(b) The express terms of the agreement and any course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms shall control both course of dealing and usage of trade and course of dealing shall control usage of trade.

(5) The usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) A party intending to offer evidence of a usage of trade must give the other party such notice as will prevent surprise.

Section 1—206. Right to Signed Receipt for Goods or Payment.—Where a person tenders payment, goods or documents, he may require a signed receipt as a condition of completing delivery.

Section 1—207. Performance or Acceptance Under Reservation of Rights.—A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest” or the like are sufficient.

Section 1—208. Option to Accelerate at Will.—A term providing that one party may accelerate payment or performance or require collateral or additional collateral not on stated contingencies but “at will” or “when he deems himself insecure” or in words of similar import means that he has power to do so only

in the good faith belief that the prospect of payment or performance is impaired but the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Article 2

Sales

Part 1

Short Title, General Construction and Subject Matter

Section 2—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Sales.

Section 2—102. Certain Security and Other Transactions Excluded From This Article.—This Article does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Section 2—103. Definitions and Index of Definitions.—(1) In this Article unless the context otherwise requires

- (a) "Buyer" means a person who buys or contracts to buy goods.
- (b) "Good faith" in the case of a merchant includes observance of reasonable commercial standards.
- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

- "Banker's credit." Section 2—325.
- "Between merchants." Section 2—104.
- "Cancellation." Section 2—106(4).
- "Commercial unit." Section 2—105.
- "Confirmed credit." Section 2—325.
- "Conforming to contract." Section 2—106.
- "Contract for sale." Section 2—106.
- "Cover." Section 2—712.
- "Entrusting." Section 2—403.
- "Financing agency." Section 2—104.
- "Future goods." Section 2—105.
- "Goods." Section 2—105.
- "Installment contract." Section 2—612.

“Letter of credit.” Section 2—325.

“Lot.” Section 2—105.

“Merchant.” Section 2—104.

“Overseas.” Section 2—323.

“Person in position of seller.” Section 2—707.

“Present sale.” Section 2—106.

“Sale.” Section 2—106.

“Sale on approval.” Section 2—326.

“Sale or return.” Section 2—326.

“Termination.” Section 2—106.

(3) The following definitions in other Articles apply to this Article:

“Check.” Section 3—104.

“Consignee.” Section 7—102.

“Consignor.” Section 7—102.

“Dishonor.” Section 3—508.

“Draft.” Section 3—104.

“Value.” Section 7—102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 2—104. Definitions. “Merchant”; “Between Merchants”; “Financing Agency.”—(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2—707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 2—105. Definitions: Transferability; “Goods”; “Future” Goods; “Lot”; “Commercial Unit.”—(1) “Goods” means all things (including

pecially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty and capable of severance without material harm thereto as described in the section on goods to be severed from realty (Section 2—107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Section 2—106. Definitions. "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation."—(1) "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2—401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On

“termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Section 2—107. Goods To Be Severed From Realty: Recording.—(1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof is ineffective.

(2) A contract for the sale apart from the land of growing crops or other identified things attached to realty and capable of severance without material harm thereto but not described in subsection (1)

(a) is a contract for sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and, subject to any third party rights provided by the law relating to realty records, the parties can by identification work a constructive severance at the time of contracting; and

(b) may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer’s rights under the contract for sale.

Part 2

Form, Formation and Readjustment of Contract

Section 2—201. Formal Requirements: Statute of Frauds.—(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it

has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

- (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or
- (b) if the party against whom enforcement is sought admits in his pleading or otherwise in court that a contract for sale was made; or
- (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2—606).

Section 2—202. Final Written Expression: Parol or Extrinsic Evidence.—Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

- (a) by course of dealing or usage of trade (Section 1—205) or by course of performance (Section 2—208); and
- (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms agreed upon.

Section 2—203. Seals Inoperative.—The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 2—204. Formation in General.—(1) A contract for sale of goods may be made in any manner sufficient to show agreement.

(2) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale even though the moment of its making cannot be determined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 2—205. Firm Offers.—An offer by a merchant to buy or sell goods in a signed writing which gives assurance that it will be held open needs no consideration to be irrevocable for a reasonable time or during a stated time but in no event for a time exceeding three months; but such term on a form supplied by the offeree must be separately signed by the offeror.

Section 2—206. Offer and Acceptance in Formation of Contract.—(1) Unless the contrary is unambiguously indicated by the language or circumstances

- (a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
- (b) an order or other offer to buy goods for prompt or current shipment can be accepted either by such shipment or by a prompt promise thereof.

(2) Unless the seller states the contrary a shipment sent in response to an order to which it does not conform is an acceptance and at the same time a breach. But a shipment of non-conforming goods offered as an accommodation to the buyer in substitution for the goods described in the order is not an acceptance.

(3) The beginning of a requested performance can be a reasonable mode of acceptance but in such a case an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 2—207. Additional Terms in Acceptance or Confirmation.—(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon.

(2) The additional terms are to be construed as proposals for addition to the contract and between merchants become part of the contract unless they materially alter it or notification of objection to them has already been given or is given within a reasonable time.

Section 2—208. Course of Performance or Practical Construction.—Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of

performance accepted without objection shall be relevant to determine the meaning of the agreement or to show a waiver or modification of any term inconsistent with such course of performance.

Section 2—209. Modification and Waiver.—(1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification except by a signed writing cannot be otherwise modified, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the Statute of Frauds section of this Article (Section 2—201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) Unless reliance on it has made retraction unjust a waiver which affects an executory portion of the contract may be retracted by receipt of reasonable notification that strict performance will be required of any term waived.

Section 2—210. Delegation of Performance; Assignment of Rights.—(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating from liability for any breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the performance of the other party. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the circumstances indicate the contrary (as in an assignment for security) it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as impairing his expectation of performance and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2—609).

Part 3

General Obligation and Construction of Contract

Section 2—301. General Obligations of Parties.—The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Section 2—302. Unconscionable Contract or Clause.—(1) If the court finds the contract or any clause of the contract to be unconscionable it may refuse to enforce the contract or may strike any unconscionable clauses and enforce the contract as if the stricken clause had never existed.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the court may afford the parties an opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Section 2—303. Allocation or Division of Risks.—Where this Article allocates a risk or a burden as between the parties “unless otherwise agreed,” the agreement may not only shift the allocation but may also divide the risk or burden.

Section 2—304. Price Payable in Money, Goods, Realty, or Otherwise.—(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller’s obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor’s obligations in connection therewith.

Section 2—305. Open Price Term.—(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

Section 2—306. Output, Requirements and Exclusive Dealings.—(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) Where in connection with a contract for sale there is a lawful agreement for exclusive dealing by either the seller or the buyer in the kind of goods concerned, good faith also imposes on each party an obligation of due diligence.

Section 2—307. Delivery in Single Lot or Several Lots.—Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Section 2—308. Absence of Specified Place for Delivery.—Unless otherwise agreed

- (a) the place for delivery of goods is the seller's place of business or if he has none his residence; but
- (b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and
- (c) documents of title may be delivered through customary banking channels.

Section 2—309. Absence of Specific Time Provisions; Notice of Termination.—(1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 2—310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.—Unless otherwise agreed

- (a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and
- (b) if the seller is authorized to send the goods he may ship them under reservation, and may demand payment against tender of the documents of title, but in the absence of such a term as C. I. F., C. O. D. or cash against documents the buyer may inspect the goods after their arrival before he pays; and
- (c) if delivery is otherwise authorized and made by way of documents of title payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and
- (d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 2—311. Options and Cooperation Respecting Performance.—(1) A contract for sale which is otherwise sufficiently definite (subsection (3) of Section 2—204) is not made invalid by the fact that the agreement leaves particulars of performance to be specified by one of the parties.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and specifications or arrangements relating to shipment are at the seller's option.

(3) Where the exercise of such an option will materially affect the other party's performance but is not seasonably exercised or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

- (a) is excused for any resulting delay in his own performance; and
- (b) may also either proceed to perform in any reasonable manner or await the time for his own performance and then treat the failure to exercise the option or to cooperate as a breach by failure to deliver or accept the goods.

Section 2—312. Warranty of Title and Against Infringement.—(1) Unless otherwise agreed there is in a contract for sale a warranty by the seller that

- (a) the title conveyed shall be good, and its transfer rightful; and
- (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge and also free from any rightful claim of any third person by way of infringement or otherwise unless the circumstances at the time of contracting place the risk of such claim upon the buyer.

(2) Where the circumstances give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have, no personal obligation is imposed by this section on the person selling unless otherwise agreed.

Section 2—313. Express Warranties by Affirmation, Promise, Description, Sample.—(1) Express warranties by the seller are created as follows:

- (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes a basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
- (b) Any description of the goods which is made a basis of the bargain creates an express warranty that the goods shall conform to the description.
- (c) Any sample or model which is made a basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Section 2—314. Implied Warranty: Merchantability; Usage of Trade.—(1) Unless excluded or modified (Section 2—316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind or though not a merchant states generally that they are guaranteed. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

- (2) Goods to be merchantable must at least be such as
- (a) pass without objection in the trade under the contract description; and
 - (b) are of fair average quality in the trade and within the description; and
 - (c) are fit for the ordinary purposes for which such goods are used; and
 - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
 - (e) are adequately contained, packaged, and labeled as the agreement may require; and
 - (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2—316) other implied warranties may arise from course of dealing or usage of trade.

Section 2—315. Implied Warranty: Fitness for Particular Purpose.—Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2—316. Exclusion or Modification of Warranties.—(1) If the agreement creates an express warranty, words disclaiming it are inoperative.

(2) Exclusion or modification of the implied warranty of merchantability or of fitness for a particular purpose must be in specific language and if the inclusion of such language creates an ambiguity in the contract as a whole it shall be resolved against the seller; except that

- (a) all implied warranties are excluded by expressions like "as is," "as they stand," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

- (b) when the buyer has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
- (c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(3) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2—718 and 2—719).

Section 2—317. Cumulation and Conflict of Warranties Express or Implied.—Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (a) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (b) A sample from an existing bulk displaces inconsistent general language of description.
- (c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 2—318. Third Party Beneficiaries of Warranties Express or Implied.—A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Section 2—319. F. O. B. and F. A. S. Terms.—(1) Unless otherwise agreed the term F. O. B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

- (a) when the term is F. O. B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2—504) and bear the expense and risk of putting them into the possession of the carrier; or
- (b) when the term is F. O. B. the place of destination, the seller must at his own expense and risk transport the goods to that place and

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there tender delivery of them in the manner provided in this Article (Section 2—503);

(c) when under either (a) or (b) the term is also F. O. B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F. O. B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (Section 2—323).

(2) Unless otherwise agreed the term F. A. S. vessel (which means “free alongside”) at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

- (a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port; and
- (b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1). (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F. A. S. or F. O. B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2—311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F. O. B. vessel or F. A. S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2—320. C. I. F. and C. & F. Terms.—(1) The term C. I. F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C. F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C. I. F. destination or its equivalent requires the seller at his own expense and risk to

- (a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

- (b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and
- (c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and
- (d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and
- (e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C. I. F. term except the obligation as to insurance.

(4) Under the term C. I. F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2—321. C. I. F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival.—Under a contract containing a term C. I. F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights," "delivered weights," "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Section 2—322. Delivery “Ex-Ship.”—(1) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

- (a) the seller must discharge all liens arising out of the carriage and furnish the buyer with direction which puts the carrier under a duty to deliver the goods; and
- (b) the risk of loss does not pass to the buyer
 - until the goods leave the ship’s tackle or are otherwise properly unloaded.

Section 2—323. Form of Bill of Lading Required in Overseas Shipment; “Overseas.”—(1) Where the contract contemplates overseas shipment and contains a term C. I. F. or C. & F. or F. O. B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

- (a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of Section 2—508); and
- (b) even though the full set is demanded, if the documents are sent from abroad the person tendering a single part may nevertheless require payment against such parts as are then available if accompanied by an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Section 2—324. “To Arrive” Term.—Under a term “to arrive” or “no arrival, no sale” or the like, unless otherwise agreed,

- (a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and
- (b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to unique goods (Section 2—613).

Section 2—325. “Letter of Credit” Term; “Confirmed Credit.”—(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) After the furnishing of a proper letter of credit the seller may not without seasonably notifying the buyer require payment directly from him.

(3) Unless otherwise agreed the term “letter of credit” or “banker’s credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller’s financial market.

Section 2—326. Sale on Approval and Sale or Return.—(1) A “sale on approval” is a contract for sale under which the goods delivered, notwithstanding such use by the buyer as is consistent with their testing or trying out, are to remain the seller’s until acceptance by the buyer. A “sale or return” is a contract for sale under which the goods even though they conform to the contract or have been accepted by the buyer are subject to return at his option.

(2) There is a contract for sale or return when goods are delivered to the buyer for resale and are charged at a fixed price but even though they conform to the contract are returnable against recredit or repayment of their price in full or less minor charges. Where the buyer has a place of business at which he deals in goods of the kind involved, such words as “on consignment” or “on memorandum” or other words purporting to reserve title to the seller until payment or resale are insufficient as against the buyer’s creditors to keep the transaction from being a sale or return unless the seller complies with any applicable law requiring a consignor’s interest or the like to be evidenced by a sign or estab-

lishes that the buyer is known to be primarily engaged in selling the goods of others or complies with the filing provisions of the Article on Secured Transactions (Article 9).

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2—201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2—202).

Section 2—327. Special Incidents of Sale on Approval and Sale or Return.—(1) Under a sale on approval unless otherwise agreed

- (a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and
- (b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and
- (c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

- (a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and
- (b) the return is at the buyer's risk and expense.

Section 2—328. Sale by Auction.—(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods or the bidder may retract his bid until the auctioneer's announcement of completion, but a bidder's retraction does not revive any previous bid. In an auction without reserve the goods cannot be withdrawn nor a bid retracted.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, except at a forced sale or where notice has been given that liberty for such bids is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last prior good faith bid.

Part 4

Title, Creditors and Good Faith Purchasers

Section 2—401. Passing of Title; Reservation for Security; Limited Application of This Section.—Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2—501). Subject to this provision title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties except that

- (a) any reservation by the seller of the title (property) in goods delivered or otherwise identified to a contract for sale is limited in effect to reservation of a security interest; and
- (b) no agreement that a contract for sale is a "cash sale" alters the effects of identification or impairs the rights of good faith purchasers from the buyer.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though document of title is to be delivered at a different time or place; and in particular despite any reservation of a security interest by the bill of lading

- (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
- (b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

- (a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or
- (b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale."

Section 2—402. Rights of Seller's Creditors Against Sold Goods.—(1) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(2) Nothing in this Article shall be deemed to impair the rights of creditors of the seller where identification to the contract and delivery are made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and are made under circumstances which apart from this Article would constitute the transaction a fraudulent transfer or avoidable preference.

Section 2—403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting."—(1) A purchaser of goods acquires all title which his transferor has or has power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7).

Part 5

Performance

Section 2—501. Insurable Interest in Goods; Manner of Identification of Goods.—(1) The buyer obtains an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

- (a) when the contract is made if it is for the sale of goods already existing and identified;
- (b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
- (c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

Section 2—502. Buyer's Right to Goods on Seller's Insolvency.—(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has an insurable interest may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his insurable interest has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 2—503. Manner of Seller's Tender of Delivery.—(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to

enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

- (a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
- (b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved tender requires that the seller either

- (a) tender a negotiable document of title covering such goods; or
- (b) procure acknowledgment by the bailee of the buyer's right to possession of the goods.

Tender to the buyer of a non-negotiable document of title or of other written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to obey the direction remains on the seller until the buyer has had a reasonable time to present it, and a refusal by the bailee to obey it defeats the tender.

(5) Where the contract requires the seller to deliver documents

- (a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of Section 2—323; and
- (b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

Section 2—504. Shipment by Seller.—Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

- (a) put the goods in the possession of a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
- (b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- (c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

Section 2—505. Seller's Shipment Under Reservation.—(1) Where the seller has identified goods to the contract by or before shipment:

- (a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods but no more. His procurement of it to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
- (b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (subsection (2) of Section 2—507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

Section 2—506. Rights of Financing Agency.—(1) A financing agency by making payment or advances against a draft which relates to a shipment of goods acquires to that extent the shipper's rights in the goods and his right to have the draft honored by the buyer, in addition to its own rights under the draft and any document of title securing it.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document.

Section 2—507. Effect of Seller's Tender; Delivery on Condition.—(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 2—508. Cure by Seller of Improper Tender or Delivery; Replacement.—(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 2—509. Risk of Loss in the Absence of Breach.—(1) Where the contract requires or authorizes the seller to ship the goods

- (a) if it does not require him to deliver at destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation; but
- (b) if it does require him to deliver at destination the risk of loss passes to the buyer when the goods are there duly tendered.

In neither case does risk of loss turn on the time of delivery of documents of title.

(2) Where the case is not within subsection (1) and the goods are not held by a bailee to be delivered without being moved (subsection (4) of Section 2—503), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(3) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2—327).

Section 2—510. Effect of Breach on Risk of Loss.—(1) Where a tender or delivery of goods fails to conform to the contract the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the seller.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer.

Section 2—511. Tender of Payment by Buyer; Payment by Check.—(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 2—512. Payment by Buyer Before Inspection.—(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

- (a) the non-conformity appears without inspection; or
- (b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Act (Section 5—111).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of the goods or impair the buyer's right to inspect or any of his remedies.

Section 2—513. Buyer's Right to Inspection of Goods.—(1) Unless otherwise agreed where the buyer has not previously examined the goods tendered or delivered or identified to the contract for sale, he has a right subject to subsection (3) to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C. I. F. contracts (subsection (3) of Section 2—321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

- (a) for delivery “C. O. D.” or on other like terms; or
- (b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Section 2—514. When Documents Deliverable on Acceptance; When on Payment.—Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise only on payment.

Section 2—515. Preserving Evidence of Goods in Dispute.—In furtherance of the adjustment of any claim or dispute

- (a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and
- (b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

Part 6

Breach, Repudiation and Excuse

Section 2—601. Buyer’s Rights on Improper Delivery.—Subject to the provisions of this Article on breach in installment contracts (Section 2—612) and unless otherwise agreed under the sections on contractual limitation of remedy (Sections 2—718 and 2—719), if the

goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

Section 2—602. Manner and Effect of Rightful Rejection.—(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2—603 and 2—604),

- (a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
- (b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2—711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
- (c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (Section 2—703).

Section 2—603. Merchant Buyer's Duties as to Rightfully Rejected Goods.—(1) Subject to any security interest in the buyer (subsection (3) of Section 2—711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Section 2—604. Buyer's Options as to Salvage of Rightfully Rejected Goods.—Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 2—605. Waiver of Buyer's Objections by Failure to Particularize.—(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

- (a) where the seller could have cured it if stated seasonably; or
- (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

Section 2—606. What Constitutes Acceptance of Goods.—(1) Acceptance of goods occurs when the buyer

- (a) signifies his acceptance to the seller; or
- (b) fails to make an effective rejection (subsection (1) of Section 2—602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
- (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 2—607. Effect of Acceptance; Notice of Breach.—(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) When a non-conforming tender has been accepted the buyer must within a reasonable time after he discovers or should have discovered the breach notify the

seller of breach or be barred from any remedy. The burden is on the buyer to establish any breach with respect to the goods accepted.

Section 2—608. Revocation of Acceptance in Whole or in Part.—(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

- (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
- (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Section 2—609. Right to Adequate Assurance of Performance.—(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Section 2—610. Anticipatory Repudiation.—When either party repudiates the contract with respect to a performance the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) resort to any remedy for breach (Sections 2—703 and 2—711); or

- (b) await performance by the repudiating party or negotiate for retraction, the repudiating party meanwhile being free to retract as provided and limited by the next section; and
- (c) in either case suspend his own performance.

Section 2—611. Retraction of Repudiation.—(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform but must include any assurance justifiably demanded under the provisions of this Article (Section 2—609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 2—612. "Installment Contract"; Breach.—

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted and paid for, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Section 2—613. Casualty to Unique Goods.—Where the contract relates to identified goods which are irreplaceable or are treated by the parties as unique for purposes of the contract, and the goods suffer casualty without fault of either party before the risk of loss

passes to the buyer, or in a proper case under a "to arrive" term (Section 2—324) then

- (a) if the loss is total the contract is avoided; and
- (b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or deficiency in quantity but without further right against the seller.

Section 2—614. Substituted Performance.—(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 2—615. Excuse by Failure of Presupposed Conditions.—Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

- (a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
- (b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract. He may so allocate in any manner which is fair and reasonable.

- (c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

Section 2—616. Procedure on Notice Claiming Excuse.—(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2—612), then also as to the whole,

- (a) terminate and thereby discharge any unexecuted portion of the contract; or
 (b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

Part 7

Remedies

Section 2—701. Remedies for Breach of Collateral Contracts Not Impaired.—Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

Section 2—702. Seller's Remedies on Discovery of Buyer's Insolvency.—(1) Where the seller discovers the buyer to be insolvent he may

- (a) refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2—705); and
 (b) subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2—403), and within ten days after receipt, reclaim any goods received by the buyer on credit, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply.

(2) Successful reclamation of goods excludes all other remedies with respect to them.

Section 2—703. Seller's Remedies in General.—Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2—612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (Section 2—705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (Section 2—706);
- (e) so far as any goods have not been resold recover damages for their non-acceptance (Section 2—708) or in a proper case their price (Section 2—709);
- (f) cancel.

Section 2—704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach.—An aggrieved seller under the preceding section may identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control. If the goods were then in process of procurement or manufacture he may complete the process and identify them to the contract unless in reasonable commercial judgment the completion will materially increase the damages.

Section 2—705. Seller's Stoppage of Delivery in Transit or Otherwise.—(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2—702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer wrongfully repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
 - (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
 - (d) negotiation to the buyer of any negotiable document of title covering the goods.
- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

- (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
- (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

Section 2—706. Seller's Resale Including Contract for Resale.—(1) Under the conditions stated in Section 2—703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2—710), but less any expense saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

- (a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
- (b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and
- (c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and
- (d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2—707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2—711).

Section 2—707. "Person in the Position of a Seller."
—A buyer's agent or other consignee who has paid or become responsible for the price or anyone who otherwise holds as against the buyer or consignee a security interest in goods similar to that of a seller is a "person in the position of a seller" and may as provided in this Article withhold or stop delivery (Section 2—705) and resell (Section 2—706) and recover incidental damages (Section 2—710).

Section 2—708. Seller's Damages for Non-Acceptance.—The measure of damages for non-acceptance is the difference between the price current at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2—710), but less any expense saved in consequence of the buyer's breach, except that if the foregoing measure of damages is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer.

Section 2—709. Action for the Price.—(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

- (a) of goods accepted or of conforming goods lost or damaged after risk of their loss has passed to the buyer; and
- (b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2—610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

Section 2—710. Seller's Incidental Damages.—Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 2—711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.—(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2—612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

- (a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
 - (b) recover damages for non-delivery as provided in this Article (Section 2—713).
- (2) Where the seller fails to deliver or repudiates the buyer may also
- (a) if the goods have been identified recover them as provided in this Article (Section 2—502); or
 - (b) in a proper case obtain specific performance replevy the goods as provided in this Article (Section 2—716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer who has paid all or part of the price has a security interest in goods in his possession or control for the amount paid plus any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may on notifying the seller of his intention to do so hold such goods and resell them in like manner as an aggrieved seller (Section 2—706).

Section 2—712. "Cover"; Buyer's Procurement of Substitute Goods.—(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2—715), but less any expense saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Section 2—713. Buyer's Damages for Non-Delivery.

—(1) The measure of damages for non-delivery is the difference between the price current at the time the buyer learned of the breach and the contract price together with the incidental and consequential damages as provided in this Article (Section 2—715), but less any expense saved in consequence of the seller's breach.

(2) Current price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Section 2—714. Buyer's Damages for Breach in Regard to Accepted Goods.—(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2—607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 2—715. Buyer's Incidental and Consequential Damages.—(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any damages from delay or otherwise resulting from the breach.

(2) Consequential damages include

- (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (b) injury to person or property proximately resulting from any breach of warranty.

Section 2—716. Buyer's Right to Specific Performance or Replevin.—(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 2—717. Deduction of Damages From Price.—The buyer on notifying the seller of his intention so to do may deduct all or any part of damages resulting from any breach from any part of the price still due.

Section 2—718. Liquidation or Limitation of Damages; Deposits.—(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) A “deposit” or “down” or part payment of more than 20 per cent of the price or \$500, whichever is smaller, to be forfeited on breach, is so forfeited only to the extent that it is a reasonable liquidation of damages. Where a seller has received payment in goods the proceeds of their resale shall in the event of breach by the buyer be treated as a “down” payment for purposes of this subsection; but if the seller has notice of the buyer’s breach before reselling goods received in payment or as a deposit, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2—706).

Section 2—719. Contractual Modification or Limitation of Remedy.—(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

- (a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer’s remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and
- (b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Section 2—720. Effect of “Cancellation” or “Rescission” on Claims for Antecedent Breach.—Unless the contrary intention clearly appears, expressions of “cancellation” or “rescission” of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Section 2—721. Remedies for Fraud.—Remedies for material misrepresentation or fraud include all remedies available under this Article for nonfraudulent breach and neither rescission of the contract for sale nor rejection or return of the goods bars the other remedies.

Section 2—722. Who Can Sue Third Parties for Injury to Goods.—Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

- (a) after the goods have been accepted a right of action against the third party is exclusively in the buyer unless his acceptance has been revoked;
- (b) before acceptance or after revocation of the buyer's acceptance a right of action against the third party is in the party to the contract for sale who has either title to or a security interest or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;
- (c) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;
- (d) either party may with the consent of the other sue for the benefit of whom it may concern.

Section 2—723. Proof of Market Price: Time and Place.—(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, damages shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place. But a party intending to offer evidence of a price prevailing at a time or place other than the one described in this Article must so notify the other party as to prevent surprise.

Section 2—724. Admissibility of Market Quotations.—Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 2—725. Statute of Limitations in Contracts for Sale.—(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

Article 3 Commercial Paper

Part 1

Short Title, Form and Interpretation

Section 3—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper.

Section 3—102. Definitions and Index of Definitions.

—(1) In this Article unless the context otherwise requires

- (a) "Issue" means the first delivery of an instrument to a holder or a remitter.
- (b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.
- (c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.
- (d) "Secondary party" means a drawer or indorser.
- (e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

- "Acceptance." Section 3—410.
- "Accommodation party." Section 3—415.
- "Alteration." Section 3—407.
- "Certificate of deposit." Section 3—104.
- "Certification." Section 3—411.
- "Check." Section 3—104.
- "Definite time." Section 3—109.
- "Dishonor." Section 3—507.
- "Documentary Draft." Section 4—104.
- "Draft." Section 3—104.
- "Holder in due course." Section 3—302.
- "Negotiation." Section 3—202.
- "Note." Section 3—104.
- "Notice of dishonor." Section 3—508.
- "On demand." Section 3—108.
- "Presentment." Section 3—504.
- "Protest." Section 3—509.
- "Signature." Section 3—401.

(3) The following definitions in other Articles apply to this Article:

- “Account.” Section 4—104.
- “Banking Day.” Section 4—104.
- “Clearing house.” Section 4—104.
- “Collecting bank.” Section 4—105.
- “Customer.” Section 4—104.
- “Depositary Bank.” Section 4—105.
- “Documentary Draft.” Section 4—104.
- “Item.” Section 4—104.
- “Midnight deadline.” Section 4—104.
- “Payor bank.” Section 4—105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 3—103. Limitations on Scope of Article.—

(1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).

Section 3—104. Form of Negotiable Instruments; “Draft”; “Check”; “Certificate of Deposit”; “Note.”

—(1) Any writing to be a negotiable instrument within this Article must

- (a) be signed by the maker or drawer; and
- (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and
- (c) be payable on demand or at a definite time; and
- (d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

- (a) a “draft” (“bill of exchange”) if it is an order;
- (b) a “check” if it is a draft drawn on a bank and payable on demand;
- (c) a “certificate of deposit” if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
- (d) a “note” if it is a promise other than a certificate of deposit.

Section 3—105. When Promise or Order Unconditional.—(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

- (a) is subject to implied or constructive conditions; or
- (b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or
- (c) refers to or states that it arises out of a separate agreement; or
- (d) states that it is drawn under a letter of credit; or
- (e) states that it is secured, whether by mortgage, reservation of title or otherwise; or
- (f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or
- (g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or
- (h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

- (a) states that it is subject to or governed by any other agreement; or
- (b) states that it is to be paid only out of a particular fund or source except as provided in this section.

Section 3—106. Sum Certain.—(1) The sum payable is a sum certain even though it is to be paid

- (a) with stated interest or by stated installments; or
- (b) with stated different rates of interest before and after default or a specified date; or
- (c) with a stated discount or addition if paid before or after the date fixed for payment; or
- (d) with exchange or less exchange, whether at a fixed rate or at the current rate; or
- (e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Section 3—107. Money.—(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in “currency” or “current funds” is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or; if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

Section 3—108. Payable on Demand.—Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

Section 3—109. Definite Time.—(1) An instrument is payable at a definite time if by its terms it is payable

- (a) on or before a stated date or at a fixed period after a stated date; or
- (b) at a fixed period after sight; or
- (c) at a definite time subject to any acceleration; or
- (d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

Section 3—110. Payable to Order.—(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as “exchange” or the like and names a payee. It may be payable to the order of

- (a) the maker or drawer; or
- (b) the drawee; or
- (c) a payee who is not maker, drawer or drawee; or
- (d) two or more payees together or in the alternative; or
- (e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

- (f) an office or officer as such, in which case it is payable to the order of the incumbent of the office or his successors; or
- (g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

Section 3—111. Payable to Bearer.—An instrument is payable to bearer when by its terms it is payable to

- (a) bearer or the order of bearer; or
- (b) a specified person or bearer; or
- (c) "cash" or the order of "cash," or any other indication which does not purport to designate a specific payee.

Section 3—112. Terms and Omissions Not Affecting Negotiability.—(1) The negotiability of an instrument is not affected by

- (a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or
- (b) a statement that collateral has been given for the instrument or in case of default on the instrument the collateral may be sold; or
- (c) a promise to give additional collateral on demand; or
- (d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or
- (e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or
- (f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer.

(2) Nothing in this section shall validate any term which is otherwise illegal.

Section 3—113. Seal.—An instrument otherwise negotiable is within this Article even though it is under a seal.

Section 3—114. Date, Antedating, Postdating.—(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

Section 3—115. Incomplete Instruments.—(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3—407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

Section 3—116. Instruments Payable to Two or More Persons.—An instrument payable to the order of two or more persons

- (a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;
- (b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

Section 3—117. Instruments Payable with Words of Description.—An instrument made payable to a named person with the addition of words describing him

- (a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;
- (b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;
- (c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

Section 3—118. Ambiguous Terms and Rules of Construction.—The following rules apply to every instrument:

- (a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.
- (b) Handwritten terms control typewritten and printed terms, and typewritten control printed.
- (c) Words control figures except that if the words are ambiguous figures control.
- (d) Unless otherwise specified a provision for interest means interest at the judgment rate

at the place of payment from the date of the instrument, or if it is undated from the date of issue.

- (e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."
- (f) Notwithstanding any term of the instrument, the holder may extend it only with the consent of the maker at the time of extension. Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period.

Section 3—119. Other Writings Affecting Instrument.—(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

Section 3—120. Instruments "Payable Through" Bank.—An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

Section 3—121. Instruments Payable at Bank.—A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment.

Section 3—122. Accrual of Cause of Action.—(1) A cause of action against a maker or an acceptor accrues

- (a) in the case of a time instrument on the day after maturity;
- (b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

- (a) in the case of a maker of a demand note, from the date of demand;
- (b) in all other cases from the date of accrual of the cause of action.

Part 2

Transfer and Negotiation

Section 3—201. Transfer: Right to Indorsement.—

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

Section 3—202. Negotiation.—(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(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.

Section 3—203. Wrong or Misspelled Name.—Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

Section 3—204. Special Indorsement; Blank Indorsement.—(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee, and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed or indorsed for collection (Section 3—206).

Section 3—205. Conditional Indorsement; Prohibiting Transfer.—Neither a conditional indorsement nor one purporting to prohibit further transfer of the instrument prevents its further transfer or negotiation, and the transferee may enforce payment in disregard of the limitation; but the indorsee and any other subsequent transferee except a collecting or payor bank takes the instrument or its proceeds subject to any rights of the indorser.

Section 3—206. Indorsement "For Collection," "For Deposit," to Agent or in Trust.—When an indorsement, whether blank or special states that it is "for collection," "for deposit," or otherwise for the benefit or account or use of the indorser or of another person

- (a) the first taker under that indorsement must apply any value given by him for or on the security of the instrument in the manner and to the person or account directed by the indorsement;
- (b) to the extent that he does so he becomes a holder for value;
- (c) later holders for value are not affected by the direction contained in the indorsement unless they have reasonable grounds to believe that a fiduciary has negotiated the instrument in breach of duty (subsection (2) (b) of Section 3—304).

Section 3—207. Negotiation Effective Although It May Be Rescinded.—(1) Negotiation is effective to transfer the instrument although the negotiation is

- (a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

- (b) obtained by fraud, duress or mistake of any kind; or
- (c) part of an illegal transaction; or
- (d) made in breach of duty.

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

Section 3—208. Reacquisition.—Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

Part 3

Rights of a Holder

Section 3—301. Rights of a Holder.—The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3—603 on payment or satisfaction, discharge it or enforce payment in his own name.

Section 3—302. Holder in Due Course.—(1) A holder in due course is a holder who takes the instrument

- (a) for value; and
- (b) in good faith including observance of the reasonable commercial standards of any business in which the holder may be engaged; and
- (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

- (a) by purchase of it at judicial sale or by taking it under legal process; or
- (b) by acquiring it in taking over an estate; or
- (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

Section 3—303. Taking for Value.—A holder takes the instrument for value

- (a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

- (b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or
- (c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

Section 3—304. Notice to Purchaser.—(1) The purchaser has notice of a claim or defense if

- (a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or
- (b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has reasonable grounds to believe

- (a) that the transfer to him is a preference voidable under the law of bankruptcy or insolvency;
- (b) that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) Except as provided with respect to conditional, trust or collection indorsements in the course of bank collections (Sections 4—203 and 4—205), the purchaser also has notice of a claim against the instrument if it has previously been indorsed conditionally or in such manner as to prohibit further negotiation and such indorsement has not been cancelled.

(4) The purchaser has notice that an instrument is overdue if he has reasonable grounds to believe

- (a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
- (b) that acceleration of the instrument has been made; or
- (c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(5) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

- (a) that the instrument is antedated or post-dated;
- (b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
- (c) that any party has signed for accommodation;
- (d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
- (e) that any person negotiating the instrument is or was a fiduciary;
- (f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(6) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

(7) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

Section 3—305. Rights of a Holder in Due Course.—To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

Section 3—306. Rights of One Not Holder in Due Course.—Unless he has the rights of a holder in due course any person takes the instrument subject to

- (a) all valid claims to it on the part of any person; and

- (b) all defenses of any party which would be available in an action on a simple contract; and
- (c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose; and
- (d) the defense that he or a person through whom he holds the instrument acquired it by theft. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

Section 3—307. Burden of Establishing Signatures, Defenses and Due Course.—(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

- (a) the burden of establishing it is on the party claiming under the signature; but
- (b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After evidence of a defense has been introduced a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

Part 4

Liability of Parties

Section 3—401. Signature.—(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Section 3—402. Signature in Ambiguous Capacity.—Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

Section 3—403. Signature by Authorized Representative.—(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument is also personally obligated unless the instrument names the person represented and shows that the signature is made in a representative capacity. The name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

Section 3—404. Unauthorized Signatures.—(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

Section 3—405. Impostors; Signature in Name of Payee.—(1) An indorsement by any person in the name of a named payee is effective if

- (a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or
- (b) a person signing as or on behalf of a drawer intends the payee to have no interest in the instrument; or
- (c) an agent or employee of the drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

Section 3—406. Negligence Contributing to Alteration or Unauthorized Signature.—Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

Section 3—407. Alteration.—(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

- (a) the number or relations of the parties; or
- (b) an incomplete instrument, by completing it otherwise than as authorized; or
- (c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

Section 3—408. Consideration.—Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3—305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind.

Section 3—409. Draft Not an Assignment.—(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

Section 3—410. Definition and Operation of Acceptance.—(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

Section 3—411. Certification of a Check.—(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

Section 3—412. Acceptance Varying Draft.—(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) Where the holder assents to such an acceptance each drawer and indorser who does not affirmatively assent is discharged except where the variance is that payment shall be made only at a particular place.

(3) The terms of the draft are not varied by an acceptance to pay at any bank in the continental United States.

Section 3—413. Contract of Maker, Drawer and Acceptor.—(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

Section 3—414. Contract of Indorser; Order of Liability.—(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

Section 3—415. Contract of Accommodation Party.—(1) An accommodation party is one who signs the instrument in any capacity as surety for another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party

the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

Section 3—416. Contract of Guarantor.—(1) “Payment guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) “Collection guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

Section 3—417. Warranties on Presentment and Transfer.—(1) Unless otherwise agreed any person who obtains payment or acceptance and any prior transferor warrants to a party who pays or accepts in good faith

- (a) that he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and
- (b) that he has no knowledge of any effective direction to stop payment; and
- (c) that the instrument has not been materially altered, and that he has no knowledge that the signature of the maker or drawer is unauthorized, except that such warranties are not given by a holder in due course who has taken a draft drawn on and accepted by a bank after such alteration or signature or by a holder in due course of a note. This

exception applies even though a draft has been accepted "payable as originally drawn" or in equivalent terms.

(2) Unless otherwise agreed any party who transfers an instrument for consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

- (a) all signatures are genuine or authorized; and
- (b) the instrument has not been materially altered; and
- (c) the transfer is rightful; and
- (d) no defense of any party is good against him; and
- (e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

Section 3—418. Finality of Payment or Acceptance.—Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on pre-shipment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course.

Section 3—419. Conversion of Instrument; Innocent Representative.—(1) An instrument is converted when

- (a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or
- (b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or
- (c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) A representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

Part 5

Presentment, Notice of Dishonor and Protest

Section 3—501. When Presentment, Notice of Dishonor, and Protest Necessary.—(1) Unless excused (Section 3—511) presentment is necessary to charge secondary parties as follows:

- (a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;
 - (b) presentment for payment is necessary to charge any indorser;
 - (c) in the case of any drawer the acceptor of a draft made payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3—502 (1) (b).
- (2) Unless excused (Section 3—511)
- (a) notice of any dishonor is necessary to charge any indorser;
 - (b) in the case of any drawer, the acceptor of a draft made payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3—502 (1) (b).

(3) Unless excused (Section 3—511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

Section 3—502. Unexcused Delay; Discharge.—(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

- (a) any indorser is discharged; and
- (b) any drawer or the acceptor of a draft made payable at a bank or the maker of a note

payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

Section 3—503. Time of Presentment.—(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

- (a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before that date;
- (b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;
- (c) where an instrument shows the date on which it is payable presentment for payment is due on that date;
- (d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;
- (e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection

- (a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and
- (b) with respect to the liability of *an indorser, seven days after his indorsement.

* "and" in original.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour and if at a bank during its banking day.

Section 3—504. How Presentment Made.—(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor or drawee by or on behalf of the holder.

(2) Presentment may be made

- (a) by mail or through a clearing house; or
- (b) at a place of payment specified in the instrument or if there be none at the place of business or residence of the party to pay even though he is absent or inaccessible.

(3) It may be made

- (a) to any one of two or more makers, acceptors or drawees; or
- (b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the continental United States must be presented at such bank.

(5) In the cases described in Section 4—210 presentment may be made in the manner and with the result stated in that section.

Section 3—505. Rights of Party to Whom Presentment is Made.—(1) The party to whom presentment is made may without dishonor require

- (a) exhibition of the instrument; and
- (b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and
- (c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and
- (d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

Section 3—506. Time Allowed for Acceptance or Payment.—(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment or for such longer time as the holder may allow.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

Section 3—507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment.—(1) An instrument is dishonored when

- (a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by midnight deadline (Section 4—301); or
- (b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

Section 3—508. Notice of Dishonor.—(1) Notice of dishonor may be given by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. An agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice is due from a bank before its midnight deadline and from any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

Section 3—509. Protest; Noting for Protest.—(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

Section 3—510. Evidence of Dishonor and Notice of Dishonor.—The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

- (a) a document regular in form as provided in the preceding section which purports to be a protest;
- (b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;
- (c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

Section 3—511. Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein.—(1) Delay in presentment or notice of dishonor or protest is excused when the party is without knowledge that it is due or when the delay is otherwise caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

- (a) the party to be charged has waived it expressly or by implication either before or after it is due; or
- (b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or
- (c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

- (a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or
- (b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where any proceeding upon dishonor is excused the effect is the same as if it had been duly taken.

Part 6

Discharge

Section 3—601. Discharge of Parties.—(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

- (a) payment or satisfaction (Section 3—603); or
- (b) tender of payment (Section 3—604); or
- (c) cancellation or renunciation (Section 3—605); or
- (d) impairment of right of recourse or of security (Section 3—606); or
- (e) reacquisition of the instrument by a prior party (Section 3—208); or
- (f) fraudulent and material alteration (Section 3—407); or

- (g) certification of a check (Section 3—411); or
- (h) acceptance varying a draft (Section 3—412); or
- (i) unexcused delay in presentment or notice of dishonor or protest (Section 3—502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

- (a) reacquires the instrument in his own right; or
- (b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of security (Section 3—606).

Section 3—602. Effect of Discharge Against Holder in Due Course.—No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

Section 3—603. Payment or Satisfaction.—(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3—201).

Section 3—604. Tender of Payment.—(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

Section 3—605. Cancellation and Renunciation.—(1) The holder of an instrument may even without consideration discharge any party

- (a) by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature, or by writing "cancelled" or equivalent words across the instrument or against the signature; or
- (b) by renouncing his rights by a signed writing or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

Section 3—606. Impairment of Recourse or of Collateral.—(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

- (a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse on the instrument, or agrees to suspend the right to enforce against such person the instrument or collateral; or
- (b) otherwise discharges such person, except that failure to give notice of dishonor to any such person does not discharge any party to whom notice is duly given; or
- (c) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

- (a) all his rights against such party as of the time when the instrument was originally due; **and**
- (b) the right of the party to pay the instrument as of that time; and
- (c) all rights of such party to recourse against **others.**

(3) An express reservation of rights is not effective as such as against any party whom the holder does not use due diligence to notify within ten days after the reservation.

Part 7

Collection of Documentary Drafts

Section 3—701. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor.—A bank which takes a documentary draft for collection must present or send the draft and accom-

panying documents for presentment and upon learning that the draft has not been paid or accepted in due course must promptly notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Section 3—702. Presentment of "On Arrival" Drafts.—When a draft or the relevant instructions require presentment "on arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 3—703. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need.—Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft

- (a) must deliver the documents to the drawee on payment or acceptance of the draft; and
- (b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must inform its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

Section 3—704. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses.—(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Part 8

Miscellaneous

Section 3—801. Drafts in a Set.—(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order.

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

Section 3—802. Effect of Instrument on Obligation for Which It is Given.—(1) Unless otherwise agreed where an instrument is taken for an underlying obligation

- (a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and
- (b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking of an uncertified check in good faith does not, if the check is presented within the time specified in Section 3—503 (2), so extend the time on the original obligation as to discharge a surety.

(3) Where a check or similar payment instrument provides that it is in full satisfaction of an obligation the payee discharges the underlying obligation by obtaining payment of the instrument unless he establishes that the original obligor has taken unconscionable advantage in the circumstances.

Section 3—803. Notice to Third Party.—In any action on an instrument a defendant may give reasonable written notice to any third person who is or may be liable on the instrument to the plaintiff or the defendant, advising such person of his right to intervene and that he will be concluded by any decision rendered. The person notified may then give similar notice to any other person who may be liable over to him. Any person so notified may intervene in the action, but even if he does not intervene is concluded as to any issue of fact therein determined.

Section 3—804. Lost, Destroyed or Stolen Instruments.—The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

Section 3—805. Instruments Not Payable to Order or to Bearer.—This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

Section 3—806. Letter of Advice of International Sight Draft.—(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(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.

LAWS OF PENNSYLVANIA,

Article 4

Bank Deposits and Collections

Part 1

General Provisions and Definitions

Section 4—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

Section 4—102. Applicability.—(1) To the extent that items within this Article are also within the scope of Article 3, they are subject to its provisions, but in the event of conflict the provisions of this Article govern.

(2) Notwithstanding Section 1—105 the liability of a bank for action taken by it in the course of collection is governed by the law of the place where the bank is located. In the case of action taken by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Section 4—103. Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care.—(1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility or limit the measure of damages for its own lack of good faith or failure to exercise ordinary care.

(2) Notwithstanding the provisions of Section 1—102 (3) (b), Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any suffered by the party as a proximate consequence.

Section 4—104. Definitions and Index of Definitions.

—(1) In this Article unless the context otherwise requires:

- (a) "Account" means any account with a bank and includes a checking, time, interest or savings account;
- (b) "Afternoon" means the period of a day between noon and midnight;
- (c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;
- (d) "Clearing house" means any association of banks or other payors regularly clearing items;
- (e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;
- (f) "Documentary draft" means any draft with accompanying documents, securities or other papers to be delivered against honor of the draft;
- (g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;
- (h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
- (i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;
- (j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;
- (k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this Article and the sections in which they appear are:

“Collecting bank.”	Section 4—105.
“Depository bank.”	Section 4—105.
“Intermediary bank.”	Section 4—105.
“Payor bank.”	Section 4—105.
“Presenting bank.”	Section 4—105.
“Remitting bank.”	Section 4—105.

(3) The following definitions in other Articles apply to this Article:

“Acceptance.”	Section 3—410.
“Certificate of deposit.”	Section 3—104.
“Certification.”	Section 3—411.
“Check.”	Section 3—104.
“Draft.”	Section 3—104.
“Holder in due course.”	Section 3—302.
“Notice of dishonor.”	Section 3—508.
“Presentment.”	Section 3—504.
“Protest.”	Section 3—509.
“Secondary party.”	Section 3—102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 4—105. “Depository Bank”; “Intermediary Bank”; “Collecting Bank”; “Payor Bank”; “Presenting Bank”; “Remitting Bank.”—In this Article unless the context otherwise requires:

- (a) “Depository bank” means the first bank to which an item is transferred for collection even though it is also the payor bank;
- (b) “Payor bank” means a bank by which an item is payable as drawn or accepted;
- (c) “Intermediary bank” means any bank to which an item is transferred in course of collection except the depository or payor bank;
- (d) “Collecting bank” means any bank handling the item for collection except the payor bank;
- (e) “Presenting bank” means any bank presenting an item except a payor bank;
- (f) “Remitting bank” means any payor or intermediary bank remitting for an item.

Section 4—106. Separate Office of a Bank.—A branch or separate office of a bank maintaining its own deposit ledgers is a separate bank for the purpose of computing the time within which and the place at or to which action may be taken or notices or orders shall be given under this Article.

Section 4—107. Time of Receipt of Items.—(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to

determine its position for the day, a bank may fix an afternoon hour of two P. M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Section 4—108. Delays.—(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Act for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Act, or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

Part 2

Collection of Items; Depositary and Collecting Banks

Section 4—201. When Item Taken for Collection.—Unless a contrary intent clearly appears, a depositary bank takes an item for collection regardless of the form of indorsement or lack of indorsement and even though credit for the item is subject to immediate withdrawal as of right.

Section 4—202. Responsibility for Collection; When Action Seasonable.—(1) A collecting bank must use ordinary care in

- (a) presenting an item or sending it for presentment; and
- (b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of Section 4—212 after learning that the item has not been paid or accepted, as the case may be; and
- (c) settling for an item when the bank receives final payment; and
- (d) making or providing for any necessary protest; and
- (e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1) (a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank.

Section 4—203. Effect of Instructions.—Only a bank's transferor can give instructions which affect the bank or constitute notice to it and a bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

Section 4—204. Methods of Sending and Presenting; Sending Direct to Payor Bank.—(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send an item direct to a payor bank but, unless otherwise instructed, may not send it direct to any other payor.

Section 4—205. Supplying Missing Indorsement; No Notice From Prior Indorsement.—(1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) A collecting or payor bank is neither given notice nor otherwise affected by any condition in or trust imposed or agency declared by a prior indorsement of any person except the bank's immediate transferor.

Section 4—206. Transfer Between Banks.—Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 4—207. Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims.—(1) A customer warrants to his depository bank and a customer and a collecting bank warrant to all subsequent intermediary banks and to the payor that

- (a) he has a good title to the item transferred or presented or is authorized to obtain payment or acceptance on behalf of one who has a good title; and
- (b) the item has not been materially altered; and

- (c) he has no knowledge that the signature of the maker or drawer is unauthorized; and
- (d) he has no knowledge of any effective stop payment order.

But the warranties of subparagraphs (b) and (c) are not given by a holder in due course who has taken an item accepted after such alteration or by a collecting bank taking from such holder even though a draft has been accepted "payable as originally drawn" or in equivalent terms.

(2) Where a transferee other than the payor has given consideration against an item sent it for collection, the transferor in addition to the warranties set forth in subsection (1) engages that upon dishonor and any necessary notice of dishonor and protest he will pay the amount of the item to the transferee or to any subsequent holder who takes it up and also warrants to such transferee or such holder that

- (a) all signatures are genuine or authorized; and
- (b) the transfer is rightful; and
- (c) no defense of any party is good against him; and
- (d) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

But the transferee may recover damages from the transferor for breach of these warranties or of the engagement to honor only to the extent of the consideration received by the transferor plus any financing charges and expenses.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

Section 4—208. When Bank Extending Credit for Item or Purchasing Draft or Time Instrument Has Security Interest.—(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

- (a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in all other cases for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either until sufficient proceeds or subsequent deposits have been received to balance withdrawals or applications.

(3) For the purpose of this section, credits first given are first withdrawn.

Section 4—209. When Bank Gives Value for Purposes of Holder in Due Course.—For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3—302 on what constitutes a holder in due course.

Section 4—210. Presentment by Notice of Item Not Payable by, Through or at a Bank; Liability of Secondary Parties.—(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3—505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3—505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

Section 4—211. Media of Remittance; Provisional and Final Settlement in Certain Cases.—(1) A collecting bank may take in settlement of an item

- (a) a check of the remitting bank or of another bank on any bank except the remitting bank; or
- (b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

- (c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or
 - (d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation; and if before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument approved by this subsection of or on another bank, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.
- (2) A collecting bank becomes liable for an item as if it had actually received proceeds in money if
- (a) it receives for the item otherwise than as approved in subsection (1) (b) a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which it has authorized or which it fails to return, present or forward for collection by its midnight deadline; or
 - (b) it receives for the item a final credit on the books of another bank which it accepts or has authorized.

Section 4—212. Right of Charge-Back or Refund; Direct Returns.—(1) A collecting bank which has made provisional settlement with its customer for an item and learns that it will not receive final payment in ordinary course by reason of dishonor, suspension of payments by a bank or otherwise may revoke the settlement, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the item if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts.

(2) Within the time and manner prescribed by this section and Section 4—301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4—301).

(4) The right to charge-back is not affected by
 (a) prior use of the credit given for the item; or
 (b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If provisional credit has been given in dollars for an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the rate of exchange prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 4—213. Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final.—(1) Subject to the provisions governing priority as between items and notices, stop-orders, legal process and setoff (Section 4—303), an item is finally paid by a payor bank when it has paid the item in cash or has completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith, whichever happens first.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank. In all other cases debits and credits in accounts between banks accepted by collecting banks in provisional settlement for items become final when they may no longer be revoked under Section 4—212.

(3) Subject to any right of the bank to apply the credit to an obligation of the customer or to any right of charge-back or recourse, credit by the depositary bank for any deposit in the account of a customer becomes final

- (a) at the opening of its second banking day following receipt of the deposit if the depositary bank is the payor of the item;
- (b) at the opening of its next banking day following receipt of the deposit if the deposit is money;

- (c) when the depository bank has received final payment and a reasonable time to learn that fact has elapsed, in any case where it has received a provisional settlement; and
- (d) in all other cases, when the depository bank has received final payment.

Section 4—214. *Insolvency and Preference.*—(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a final settlement for the item with its customer or the presenting bank, the owner of the item has a preferred claim against the payor bank.

(3) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a final settlement for the item with its customer, the owner of the item has a preferred claim against such collecting bank.

Part 3

Collection of Items: Payor Banks

Section 4—301. *Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor.*—(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of Section 4—213) and before its midnight deadline it

- (a) returns the item; or
- (b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If an item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

- (4) An item is returned
- (a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or
 - (b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

Section 4—302. Payor Bank's Liability for Late Return of Item.—Unless the customer of the depository bank has broken a presentment warranty (subsection (1) of Section 4—207) he may recover from the payor bank

- (a) the amount of a demand item other than a documentary draft received by a payor bank whether properly payable or not if the payor bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or
- (b) the amount of any other properly payable item presented to it if the payor bank within the time allowed for acceptance or payment of that item neither settles for it nor returns it and accompanying documents.

Section 4—303. When Items Subject to Notice, Stop-Order, Legal Process or Set-off; Order in Which Items May be Charged or Certified—(1) Any notice, stop-order or legal process received and any valid set-off exercised by a payor bank is entitled to priority over any item drawn on or payable by and received by the bank until but not after the bank has done any of the following:

- (a) accepted or certified the item;
- (b) paid the item in cash;
- (c) settled for the item by separate remittance for the particular item;
- (d) completed the process of posting the item to the indicated account of the drawer, maker, or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
- (e) become liable for the item under Section 4—302 dealing with the payor bank's liability for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

Part 4

Relationship Between Payor Bank and Its Customer

Section 4—401. When Bank May Charge Customer's Account.—(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (a) the original tenor of his altered item; or
- (b) the tenor of his completed item, even though the bank knew it was incomplete when delivered.

Section 4—402. Bank's Liability to Customer for Dishonor.—A payor bank is liable to its customer for wrongful dishonor of an item but where the dishonor occurs through mistake its liability is limited to the actual damages proved including damages for any arrest or prosecution of the customer.

Section 4—403. Customer's Right to Stop Payment; Burden of Proof of Loss.—(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4—303.

(2) An oral order is binding upon the bank only until the customer has had reasonable opportunity to send the bank a written confirmation if the bank requests such a confirmation. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

Section 4—404. Bank Not Obligated to Pay Check More Than Six Months Old.—A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Section 4—405. Death or Incompetence of Customer.—(1) Death or incompetence of a customer does not revoke the bank's authority to accept, pay or collect his items until the bank has knowledge of the fact of death or of an adjudication of incompetence and reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Section 4—406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration.—(1) Where a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds such statement pursuant to a request or instructions of its customer or sends notice to him that such statement is ready for delivery

- (a) the customer must exercise reasonable care to examine the statement and items to discover his unauthorized signature or any alteration and must notify the bank promptly after discovery thereof; he is liable to the bank for any loss suffered by it which results from his failure to do so; and
- (b) except as provided in subsection (2) a customer who does not within ninety days discover and report his unauthorized signature or any material alteration on the face of any such item is precluded from asserting against the bank both such unauthorized signature or alteration and an unauthorized signature or alteration by the same person on items paid in good faith by the bank subsequent to the sending of the first item or notice to the customer and before receipt of notification from the customer of any such signature or alteration; and
- (c) without regard to subsection (2) a customer who does not within one year discover and report his unauthorized signature or any alteration on the face or back of the item or within three years any unauthorized indorsement, is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(2) Except as provided in subsection (1) (c) a customer who has not for good cause examined such statement and items may within thirty days after such cause ceases to operate demand recredit or repayment for the amounts paid on items materially altered or bearing his unauthorized signature.

Section 4—407. Payor Bank's Right to Subrogation on Improper Payment.—If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

- (a) of any holder in due course on the item against the drawer or maker; and
- (b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Article 5

Documentary Letters of Credit

Section 5—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Documentary Letters of Credit.

Section 5—102. Scope.—(1) This Article deals with documentary credits and does not have relation to goods since the subject matter of a documentary credit transaction is documents.

(2) When a person other than a bank issues or confirms a documentary credit or is authorized to honor drafts under such a credit, the relevant provisions of this Article apply as if such person were a bank.

(3) In construing this Article reference may be had to uniform customs among banks.

Section 5—103. Definitions and Concepts.—(1) In this Article, unless the context otherwise requires:

- (a) A "credit" is a documentary credit and may be either irrevocable or revocable. An irrevocable credit is a signed writing clearly stipulating that it is irrevocable by which a bank engages at the request of a customer to honor documentary drafts drawn by a named person under and complying with the terms of the credit. A revocable credit is a signed writing by which a bank gives notice at the request of a customer that it is authorized to honor documentary drafts drawn by a named person under and complying with the terms of the credit.

- (b) A "documentary draft" is one which is accompanied by a paper or papers. A document includes any paper accompanying a draft.
- (c) An "issuer" is a bank making an engagement or giving a notice as defined in subparagraph (a) of this Section.
- (d) A "beneficiary" is a person who, under the terms of a credit, is entitled to draw under it.
- (e) An "advising bank" is a bank which, by authority of the issuer or of a prior advising bank, gives notification of the issuance of a credit.
- (f) A "confirming bank" is a bank which assumes a direct obligation under the credit in accordance with the terms of its confirmation.
- (g) A "customer" is a buyer or other person who causes a bank to issue a credit.

(2) Other definitions applying to this Article and the Sections in which they appear are:

"Presenter." Section 5—112(3).

(3) Definitions in other Articles applying to this Article and the Sections in which they appear are:

"Holder in Due Course." Section 3—302.

"Accept" or "Acceptance." Section 3—410.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 5—104. Form of Credit.—No particular form of phrasing is required for a credit and a credit may take the form of an authority to pay or to purchase.

Section 5—105. Revocable Credit; Irrevocable Credit.—A credit is revocable unless it clearly stipulates that it is irrevocable; a credit so stipulating is an irrevocable credit.

Section 5—106. Establishment and Cancellation of a Credit.—(1) No consideration is needed either to establish a credit or for an agreement modifying its terms.

(2) Unless otherwise agreed

- (a) A credit is established with relation to all parties when the beneficiary receives the letter of credit itself or authorized written advice of it, and it is also established with relation to the customer as soon as the letter of credit is delivered to him. A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication which may be in code. The authorized naming of the issuer in an advice of credit is a sufficient signing.

- (b) An established irrevocable credit can be modified or cancelled only with the agreement of all parties as to whom it has been established.
- (c) Revocable credits may be modified or cancelled at any moment without notice to the customer or the beneficiary. Any bank or branch authorized to honor or negotiate on behalf of the issuer is entitled to reimbursement for any draft duly honored or negotiated before receipt of notice of modification or cancellation.

Section 5—107. Issuer's and Other's Responsibility.

—(1) A documentary draft which meets the terms of the relevant irrevocable credit must be honored. The issuer is not excused from honor of such a draft by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed an issuing, paying, negotiating or accepting bank is entitled to immediate reimbursement of any payment duly made under the credit and, to be put in effectively available funds not later than the day before maturity of any acceptance duly made under the credit.

(3) Unless otherwise agreed, the issuer's obligation to its customer includes observance of customary banking practices, but does not include responsibility for any acts or omissions of the beneficiary or any other person.

Section 5—108. Advice of Credit; Error in Statement of Terms.—(1) Unless otherwise specified, a bank by advising that another bank has issued a credit assumes obligation for the accuracy of its own statement only.

(2) Even though an advising bank incorrectly states the terms of the credit, its original terms control with respect to the issuer.

(3) Unless otherwise specified, the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

Section 5—109. Presenter's Reservation of Lien or Claim.—Unless otherwise specified

(1) A person by presenting a documentary draft under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or causing such presentment authorizes such relinquishment.

(2) An express reservation of claim makes the draft not in accordance with the terms of the credit.

Section 5—110. Documents Not Genuine or Effective.—(1) Neither an issuer nor an advising, confirming, negotiating or collecting bank makes any warranty or representation in connection with the documents, except as to its own good faith and in the case of a collecting bank except also as to its authority from the person for whom it acts.

(2) Unless otherwise agreed a bank called upon to pay or accept under a credit is required to examine documents with care so as to ascertain that on their face they appear to conform to the terms of the credit but assumes no liability or responsibility for the genuineness, falsification or effect of any document apparently regular on its face.

Section 5—111. Excuse from Honor or Reimbursement.—Unless otherwise agreed

(1) A bank which has issued or confirmed a credit is not excused from honor or reimbursement by the fact that the goods or documents do not conform to the underlying contract for sale or to the warranties implied from dealing with documents; but in the event of forgery or fraud in a required document, a court of appropriate jurisdiction may enjoin the issuing or confirming bank from honoring or reimbursing unless such honor or reimbursement is demanded by a paying, accepting, or confirming bank which has acted in good faith in reliance on the document or by a negotiating bank or other indorsee of a draft which is a holder in due course and acts under a credit extending by its terms to a negotiating bank or indorsee.

(2) Whether or not the issuing or confirming bank is notified of a forgery or fraud or an alleged forgery or fraud in a document apparently regular on its face, such bank, unless enjoined, may nevertheless honor or reimburse and, in turn, it shall be entitled to recover reimbursement from the person obligated to reimburse it.

Section 5—112. Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter."—(1) A bank to which a documentary draft is presented under a credit may without dishonor of the draft or the credit—

- (a) withhold honor until the close of the third banking day following receipt of the documents; and
- (b) further withhold honor when the presenter has expressly or impliedly consented thereto.

(2) Upon dishonor, if the presenter is not in the same place, the bank may unless otherwise instructed, accomplish the return of the draft and documents by sending an advice to the presenter that it is holding the draft and documents at his disposal.

(3) "Presenter" means any person presenting a draft for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

Section 5—113. Indemnities.—A bank seeking to obtain (whether for itself or another) payment, acceptance, negotiation or reimbursement under a credit may give indemnities to induce such payment, acceptance, negotiation or reimbursement.

Section 5—114. Availability of Credit in Portions.—Unless otherwise specified a credit may be used in portions at the discretion of the beneficiary.

Section 5—115. Transfer and Assignment.—(1) The right to draw under a credit can be transferred or assigned only on the express authority of the issuer and provided that the credit is expressly designated as transferable or assignable.

(2) The proceeds of a credit may be assigned, and the issuer or any paying, confirming or accepting bank may give effect to the assignment, but unless otherwise agreed, the issuer or any negotiating, paying, confirming or accepting bank may notwithstanding filing or notice of any assignment honor or negotiate a draft drawn by the beneficiary. Subject to the provisions of this subsection (2), an assignment of proceeds creates a security interest to the extent provided in and subject to compliance with Article 9 on Secured Transactions.

Section 5—116. Remedy for Improper Dishonor or Repudiation.—(1) If an issuing bank dishonors a complying draft under an irrevocable credit any holder to whom the credit extends by its terms may recover the face amount of the draft and has with respect to any documents the rights of a person in the position of a seller (Section 2—707).

(2) If an issuing bank repudiates an irrevocable credit the beneficiary has an immediate right of action and with respect to any documents may proceed like a seller after repudiation by the buyer (Sections 2—610, 2—611 and 2—703 through 2—706).

(3) In no event shall recovery exceed the amount of the credit or the draft as the case may be.

Section 5—117. Insolvency of Bank Holding Funds for Documentary Credit.—(1) Where an issuing, advising or confirming bank, or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit, the receipt or allocation by the bank of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over to the bank after or before the insolvency as indemnity against or specifi-

cally for the purpose of payment of drafts drawn under the designated credit, the drafts are entitled to payment in preference over depositors or other general creditors of the bank; and

- (b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and
- (c) a charge to a general or current account with the bank if specifically consented to for the purpose of indemnity against or payment of drafts drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

Article 6

Bulk Transfers

Section 6—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

Section 6—102. "Bulk Transfer"; "Transfer"; Transfers of Equipment; Enterprises Subject to This Article; Bulk Transfers Subject to This Article.—(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9—109) of an enterprise subject to this Article.

(2) A transfer of a substantial part of the equipment (Section 9—109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article.

Section 6—103. Transfers Excepted From This Article.—The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of proceedings for the dissolution of a corporation and of which the creditors of the corporation or reorganization receive advance notice substantially equivalent to that provided in this Article;

(6) Transfers to a person maintaining a known place of business in this State who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Section 6—104. Schedule of Property, List of Creditors.—(1) Except as provided with respect to auction sales (Section 6—108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

- (a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this Section; and
- (b) The parties prepare a schedule of the property transferred sufficient to identify it; and
- (c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the prothonotary in the county in which the property was located at the time of transfer.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Section 6—105. Notice to Creditors.—In addition to the requirements of the preceding Section any bulk transfer subject to this Article except one made by auction sale (Section 6—108) is ineffective against any creditor of the transferor unless at least ten days before the goods are moved or the transferee takes possession of them or the interest of the transferor passes to the transferee, whichever happens first, the transferee gives notice of the transfer in the manner hereafter provided (Section 6—107).

Section 6—106. Application of the Proceeds.—In addition to the requirements of the two preceding Sections:

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6—104) or filed in writing in the place stated in the notice (Section 6—107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be pro rata.

Section 6—107. The Notice.—(1) The notice to creditors (Section 6—105) shall state:

- (a) that a bulk transfer is about to be made; and
- (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and
- (c) whether or not all 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 creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

- (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
- (b) the address where the schedule of property and list of creditors (Section 6—104) may be inspected;
- (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;
- (d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and
- (e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered mail to all the persons shown on the list of creditors furnished by the transferor (Section 6—104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

Section 6—108. Auction Sales; "Auctioneer."—

(1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6—104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall:

- (a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (Section 6—104);
- (b) give notice of the auction personally or by registered mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him *to hold or assert claims against the transferor; and
- (c) assure that the net proceeds of the auction are applied as provided in this Article (Section 6—106).

* "or" in original.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but it renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

Section 6—109. What Creditors Protected; Credit for Payment to Particular Creditors.—(1) The creditors of the transferor mentioned in this Article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6—105 and 6—107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (Section 6—106 and subsection (3) (c) of 6—108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

Section 6—110. Subsequent Transfers.—When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

(1) a purchaser of any of such property from such transferee with knowledge or notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value without such knowledge or notice takes free of such defect.

Section 6—111. Limitation of Actions.—No action under this Article shall be brought more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed actions may be brought within six months after its discovery.

Article 7

Warehouse Receipts, Bills of Lading and Other Documents of Title

Part 1

General

Section 7—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title.

Section 7—102. Definitions and Index of Definitions.

—(1) In this Article, unless the context otherwise requires:

- (a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
- (b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
- (c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.
- (d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
- (e) "Document" means document of title as defined in the general definitions in Article 1 (Section 1—201).
- (f) "Issuer" means bailee except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.
- (g) A person gives "value" for a document of title if he takes document
 - (i) in return for any consideration sufficient to support a simple contract including the extension of immediately available credit whether or not drawn upon and whether or not a charge back is provided for in the event or difficulties in collection; or
 - (ii) as security for or in total or partial satisfaction of a pre-existing claim; or
 - (iii) by taking delivery pursuant to a pre-existing contract for purchase.
- (h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

“Duly negotiate.” Section 7—501.

“Person entitled under the document.” Section 7—403 (4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

“Contract for sale.” Section 2—106.

“Overseas.” Section 2—323.

“Goods.” Section 2—105.

“Receipt” of goods. Section 2—103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 7—103. Relation of Article to Treaty, Statute, Tariff, Classification or Regulation.—To the extent that any treaty or statute of the United States, regulatory statute of this State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto.

Section 7—104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.—(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if it provides for delivery to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable.

Part 2

Warehouse Receipts: Special Provisions

Section 7—201. Who May Issue a Warehouse Receipt.—A warehouse receipt may be issued by a warehouseman.

Section 7—202. Form of Warehouse Receipt; Essential Terms; Optional Terms.—(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for any loss caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

- (e) the rate of storage and handling charges;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman, which may be made by his authorized agent;
- (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7—209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Act and do not impair his obligation of delivery (Section 7—403) or his duty of care (Section 7—204). Any contrary provisions shall be ineffective.

Section 7—203. *Liability for Non-Receipt or Misdescription.*—A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods, may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by “said to contain” or the like, if such indication be true, or the party or purchaser otherwise has notice.

Section 7—204. *Duty of Care; Contractual Limitation of Warehouseman’s Liability.*—(1) A warehouseman is liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for any loss or injury to the goods which could not have been avoided by the exercise of such care. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight beyond which

the warehouseman shall not be liable; Provided, however, That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(2) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(3) This section does not repeal or change any existing law or rule of law which imposes a higher responsibility upon the warehouseman or invalidates contractual limitations which would be permissible under this Article.

Section 7—205. Title Under Warehouse Receipt Defeated in Certain Cases; Field Warehouse Receipt.—

(1) A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

(2) Where goods are stored under a field warehousing or similar arrangement on premises which are part of the place of business of the depositor or which are within the depositor's premises or substantially contiguous thereto, any security interest in such goods resting on the transfer of a warehouse receipt is subject to the Article on Secured Transactions (Article 9) and can be perfected only as provided in that Article (subsection (2) of Section 9—305).

Section 7—206. Termination of Storage at Warehouseman's Option.—(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7—210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

Section 7—207. Goods Must Be Kept Separate; Fungible Goods.—(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

Section 7—208. Altered Warehouse Receipts.—Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Section 7—209. Lien of Warehouseman.—(1) A warehouseman has a lien on any goods for charges subsequent to the date of issue of the warehouse receipt for storage or transportation (including demurrage and terminal charges), insurance, labor or charges present or future in relation to goods covered by the document, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to this Article. But against a purchaser for value of a negotiable warehouse receipt, a warehouseman's lien is limited to charges stated in the receipt or if no charges are stated then to a reasonable charge.

(2) The warehouseman may also reserve a security interest for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest.

(3) A warehouseman's lien for charges and expenses under subsection (1) is effective against the bailor or any person entitled to the goods unless the warehouseman had *notice that the bailor lacked authority to subject the goods to such charges and expenses but a security interest under subsection (2) is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7—503, and any security interest reserved by the warehouseman is governed by the Article on Secured Transactions (Article 9).

(4) A warehouseman loses his lien on any goods which he unjustifiably refuses to deliver or which he surrenders.

Section 7—210. Enforcement of Warehouseman's Lien.—(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to

* "noticed" in original.

insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

- (a) All persons known to claim an interest in the goods must be notified.
- (b) The notification must be delivered in person or sent by registered letter to the last known address of any person to be notified.
- (c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
- (d) The sale must conform to the terms of the notification.
- (e) The sale must be held at the nearest suitable place to that where the goods are held or stored.
- (f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman is liable for loss resulting from failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. The warehouseman may bid at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite non-compliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

Part 3

Bills of Lading: Special Provisions

Section 7—301. Liability for Non-Receipt or Misdescription; "Said to Contain"; "Shipper's Load and Count"; Improper Handling.—(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods except to the extent that the document indicates that the issuer does not know whether any, part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "said to contain," "shipper's load and count" or the like, if such indication be true.

(2) The issuer may by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading.

(3) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Section 7—302. Through Bills of Lading and Similar Documents.—(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are delivered to any such person, such person is subject to the obligation of the bailee under the document. This obligation is discharged by delivery of the goods to another such person pursuant to the document.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

Section 7—303. Diversion; Reconsignment; Change of Instructions.—(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

- (a) the holder of a negotiable bill; or
- (b) the consignor on a non-negotiable bill; or
- (c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at billed destination or if the consignee is in possession of the bill; or
- (d) the consignee on a non-negotiable bill if he owns the goods or is entitled as against the consignor to dispose of them.

(2) Unless a change of instructions is noted on a negotiable bill of lading, a purchaser without notice of the change can hold the bailee according to the original terms.

Section 7—304. Bills of Lading in a Set.—(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

Section 7—305. Destination Bills.—(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

Section 7—306. Altered Bills of Lading.—An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Section 7—307. Lien of Carrier.—(1) A carrier has a lien on any goods for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods or incident to their transportation or reasonably incurred in their sale pursuant to this Article. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A carrier's lien for charges and expenses under subsection (1) is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses.

(3) A carrier loses his lien on any goods which he surrenders or which he unjustifiably refuses to deliver.

Section 7—308. Enforcement of Carrier's Lien.—

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier is liable for loss resulting from failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. The carrier may bid at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite non-compliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

Section 7—309. Duty of Care; Contractual Limitation of Carrier's Liability.—(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances; but the damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates vary with value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(2) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

(3) This section does not repeal or change any existing law or rule of law which imposes a higher responsibility upon carriers or invalidates contractual limitations which would be permissible under this Article.

Part 4

Warehouse Receipts and Bills of Lading:

General Obligations

Section 7—401. Irregularities in Issue of Receipt or Bill or Conduct of Issuer.—The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

- (a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or
- (b) the issuer may have violated laws regulating the conduct of his business; or
- (c) the goods covered by the document were owned by the bailee at the time the document was issued; or
- (d) if it is a warehouse receipt, the person issuing does not come within the definition of warehouseman.

Section 7—402. Duplicate Receipt or Bill; Over-issue.—Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods

and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages resulting from his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Section 7—403. *Obligation of Warehouseman or Carrier to Deliver; Excuse.*—(1) The bailee must deliver the goods to a person entitled under the document who complies with subsection (2), unless and to the extent that the bailee establishes any of the following:

- (a) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (b) damage to or loss or destruction of the goods for which the bailee is not liable;
- (c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
- (d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (Section 2—705);
- (e) a diversion, reconignment or other disposition pursuant to the provisions of this Article (Section 7—303) or tariff regulating such right;
- (f) release, satisfaction or any other fact affording a personal defense against the claimant.

(2) A person claiming goods covered by a document of title must at the bailee's request satisfy the bailee's lien, and, unless the person claiming is one against whom the document confers no right under Section 7—503 (1), surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods.

(3) A bailee who delivers goods covered by an outstanding negotiable document without cancelling the document or conspicuously noting partial deliveries thereon also becomes liable for delivery of goods called for by the document to any person to whom the document is duly negotiated unless the person to whom the goods were delivered is one against whom the document confers no right under Section 7—503 (1).

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

Section 7—404. *No Liability for Good Faith Delivery Pursuant to Receipt or Bill.*—A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered them according to the terms of the document of title is not liable although the person from whom he received the goods had no authority to dispose of them.

Part 5

Warehouse Receipts and Bills of Lading:

Negotiation and Transfer

Section 7—501. Form of Negotiation and Requirements of “Due Negotiation.”—(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after special indorsement requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is “duly negotiated” when it is negotiated in the manner stated in this section to a holder who purchases it in good faith including observance of reasonable commercial standards and for value, unless it is established that the negotiation is not in the current course of business or financing; but a bailee may deliver the goods covered by the document of title to a person in possession of the document of title by the terms of which the goods are deliverable to his order or which has been negotiated to him in the manner provided in subsections (1), (2) or (3) of this section.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee’s rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

Section 7—502. Rights Acquired by Due Negotiation.—(1) Subject to the following section and to the provisions of Section 7—205 on fungible goods and field warehouse receipts, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel; and

(d) the direct obligation of the bailee to hold or deliver the goods according to the terms of the document free of any defense or claim by him not apparent on its face.

But a holder of a delivery order until it has been accepted by the bailee to whom it is addressed acquires rights only against the issuer of the delivery order.

(2) Title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

Section 7—503. Document of Title to Goods Defeated in Certain Cases.—A document of title confers no right in goods against a person who before issuance of the document had a legal interest in them and who neither delivered nor entrusted them to the person procuring the document with power of disposition or pursuant to a contract for sale nor acquiesced in his procurement of any document of title.

(2) Title to goods based upon a delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering such goods has been duly negotiated. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder covering such goods has been duly negotiated; but delivery by the carrier against surrender of its bill of lading in accordance with Part 4 of this Article discharges the carrier's obligation to deliver.

Section 7—504. Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Seller's Stoppage of Delivery.—(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated by those creditors of the transferor who could treat the sale as void under Section 2—402 or by a purchaser from the transferor under Section 2—403 or by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have

been delivered to a buyer in ordinary course of trade and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under Section 2—705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be *indemnified by the seller against any resulting loss or expense.

Section 7—505. Indorser Not a Guarantor for Other Parties.—The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Section 7—506. Delivery Without Indorsement; Right to Compel Indorsement.—The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Section 7—507. Warranties on Negotiation or Transfer of Receipt or Bill.—Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his purchaser in addition to any warranty made in selling the goods

- (a) that the document is genuine; and
- (b) that he has no knowledge of any fact which would impair its validity or worth; and
- (c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 7—508. Warranties of Collecting Bank as to Documents.—A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

Section 7—509. Receipt or Bill; When Adequate Compliance With Commercial Contract.—The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Documentary Letters of Credit (Article 5).

* "indemnified" in original.

Part 6

Warehouse Receipts and Bills of Lading:

Miscellaneous Provisions

Section 7—601. Lost and Missing Documents.—(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. In the case of a bill of lading action by the carrier in good faith in accordance with the official classification and tariff is not conversion. If the missing document was a negotiable warehouse receipt, the claimant must post security with the warehouseman in an amount at least double the value of the goods at the time of posting to indemnify the warehouseman against any loss by reason of the delivery of the goods.

Section 7—602. Attachment of Goods Covered by a Negotiable Document.—No lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them. The bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Section 7—603. Conflicting Claims; Interpleader.—If more than one person claims title or possession of the goods, the bailee is excused from delivering until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

Article 8

Investment Securities

Part 1

Short Title and General Matters

Section 8—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities.

Section 8—102. Definitions and Index of Definitions.—(1) In this Article unless the context otherwise requires

- (a) A “security” is an instrument issued in bearer or registered form of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment if
 - (i) it is either one of a class or series or by its terms is divisible into a class or series of instruments; and
 - (ii) it evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.
- (b) A writing which is a security is governed by this Article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that Article.
- (c) A security is in “registered form” when its terms specify a person entitled to the security or to the rights it evidences and specify that its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer.
- (d) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.

(2) “Proper form” means regular on its face with regard to all formal matters.

(3) A “subsequent purchaser” is a person who takes other than by original issue.

(4) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

“Bona fide purchaser.” Section 8—302.

“Guarantee of that signature.” Section 8—402.

“Issuer.” Section 8—201.

“Overissue.” Section 8—104.

“Value.” Section 8—303.

(5) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 8—103. Issuer's Lien.—A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is set forth conspicuously on the security.

Section 8—104. Effect of Overissue; "Overissue."—(1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation or issue results in overissue; but

- (a) if an identical security which does not constitute an overissue is available for purchase on the market, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security which constitutes the overissue; and
- (b) if a security is not so available for purchase, the purchaser may recover from the issuer the price he paid for it.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

Section 8—105. Securities Negotiable; Presumptions.—(1) Securities governed by this Article are negotiable instruments.

(2) In any action on a security the rules relating to proof of signatures and to burden of proof after signatures are admitted or established, shall be the same as in actions on commercial paper (Section 3—307).

Part 2

Issue—Issuer

Section 8—201. "Issuer."—With respect to obligations on or defenses to a security "issuer" includes a person who

- (a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform the principal obligation represented by the security; or
- (b) otherwise undertakes to perform the principal obligation represented by the security;
or
- (c) directly or indirectly creates fractional interests in rights of property which are evidenced by securities; or

- (d) becomes responsible for or in place of any other person described as an issuer in this section.

Section 8—202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.—(1) Against a purchaser for value and without notice, terms additional to those stated on a security may be made part of the security by reference to another instrument, indenture or document or to a constitution, statute, rule or regulation only to the extent that such additional terms do not materially vary the stated terms.

(2)(a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (Section 8—205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) With respect to notice of a defect or defense a purchaser is charged with notice of information set forth on the security itself but a reference on the security to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like does not of itself charge a purchaser for value with such notice even though the security expressly states that a person accepting it admits such notice.

(6) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract

in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

Section 8—203. Staleness as Notice of Defects or Irregularities in Issue.—(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which requires that the security be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect or irregularity in its issue

- (a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available and he takes the security more than one year after the date set for payment or exchange; and
- (b) in any other case if he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

Section 8—204. Effect of Issuer's Restrictions on Transfer.—A restriction on transfer imposed by the issuer even though otherwise lawful is ineffective unless noted conspicuously on the security.

Section 8—205. Effect of Unauthorized Signature on Issue.—An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that if the signing has been done by a person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing or by an employee entrusted with their responsible handling the signature is effective in favor of a purchaser for value and without notice of the lack of authority.

Section 8—206. Completion or Alteration of Instrument.—(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

- (a) any person may complete it by filling in the blanks as authorized; and
- (b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

Section 8—207. Rights of Issuer With Respect to Registered Owners.—(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

Section 8—208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.—(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

- (a) the security is genuine and in proper form; and
- (b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
- (c) the security is within the amount specified in such authorization.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

Part 3

Purchase

Section 8—301. Rights Acquired by Purchaser; Title Acquired by Bona Fide Purchaser.—(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a claim against it cannot improve his position by taking from a later bona fide purchaser.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser acquires also a perfect title to the security.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Section 8—302. “Bona Fide Purchaser.”—A “bona fide purchaser” is a purchaser for value and without notice of any claims of ownership who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

Section 8—303. “Value.”—“Value” means

- (a) any consideration sufficient to support a simple contract including the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) taking a security as collateral for or as total or partial satisfaction of a pre-existing claim; or
- (c) taking delivery pursuant to a pre-existing contract to purchase.

Section 8—304. Notice to Purchaser of Claims of Ownership.—(1) A purchaser (including a broker for seller or buyer) of a security is charged with notice of claims of ownership if

- (a) the security whether in bearer or registered form has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or
- (b) he purchases the security within six months after he has received notification that it has been lost or stolen; or
- (c) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for seller or buyer) has notice that the registered owner holds the security for a third person or that the security is registered in the name of a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of claims of ownership. If, however, the proceeds of the purchase are placed by the purchaser in the individual account of the fiduciary or are made payable in cash or to the fiduciary individually or the purchaser has reason to know that such proceeds are being used or that the transaction is for the individual benefit of the fiduciary, the purchaser is charged with notice of claims of ownership.

Section 8—305. Staleness as Notice of Claims of Ownership.—An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which requires that the security be presented or surrendered for redemption or exchange does not of itself constitute any notice of claims of ownership except in the case of a purchase

- (a) after one year from any date set for a required presentment or surrender for redemption or exchange; or

- (b) if funds are available for payment, after six months from any date set for payment of money against presentation or surrender of the security.

Section 8—306. Warranties to Purchaser for Value.

—(1) Unless otherwise agreed a person by transferring a security to a purchaser for value warrants only that

- (a) his transfer is effective and rightful; and
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact which might impair the validity of the security.

(2) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and that he has authority from his principal even though he has purchased or made advances against the claim to be collected against the delivery. A broker is not an intermediary within the meaning of this subsection in a transaction in which he has bought or sold the security for another.

Section 8—307. Effect of Delivery Without Indorsement; Right to Compel Indorsement.—Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

Section 8—308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.—(1) An indorsement of a security in registered form is made when the person specified by the terms of the instrument or by special indorsement to be entitled to the security signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred. A holder may convert a blank indorsement into a special indorsement.

(3) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the instrument will be honored by the issuer.

(4) When an indorsement purports to be only of part of the security the transfer may be registered in accordance with the indorsement, but delivery of a security so indorsed can not make the transferee a bona fide purchaser.

Section 8—309. Effect of Indorsement Without Delivery.—An indorsement of a security whether special or in blank does not constitute a transfer and does not become effective until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

Section 8—310. Indorsement of Security in Bearer Form.—An indorsement of a security in bearer form may give notice of claims of ownership (Section 8—304) but does not otherwise affect any right to registration the holder may possess.

Section 8—311. Effect of Unauthorized Indorsement.—Unless the owner has affirmed an unauthorized indorsement or is otherwise estopped from asserting its ineffectiveness

- (a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of claims of ownership who has in good faith received a new security on registration of transfer of the security so indorsed; and
- (b) an issuer who registers the transfer of a security so indorsed is subject to liability for improper registration (Section 8—404).

Section 8—312. Effect of Guaranteeing Signature or Indorsement.—(1) Any person guaranteeing a signature as being that of an indorser of a security warrants to any person taking or dealing with the security in reliance on the guaranteed signature that

- (a) the signature is not forged; and
- (b) the signer is the holder or has authority to sign in the name of the holder; and
- (c) the signer has legal capacity to sign.

But the guarantor does not warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer.

(3) The guarantor of a signature or an indorsement shall be liable to any person, including an issuer who registers a transfer in reliance on the guarantee, for any loss resulting from breach of the warranties stated in this section but no issuer may require an indorsement guarantee as a condition to registration or transfer of a security.

Section 8—313. When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder.—(1) Delivery to a purchaser occurs when

- (a) he or a person designated by him acquires possession of a security; or
- (b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or
- (c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or
- (d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser.

(2) Except as specified in subparagraphs (b) and (c) of subsection (1) the purchaser is not the holder of securities held for him by his broker despite a confirmation of purchase and a book entry and other indication that the security is part of a fungible bulk held for customers and despite the customer's acquisition of a proportionate property interest in the fungible bulk.

Section 8—314. Duty to Deliver, When Completed.—

(1) Unless otherwise agreed where a sale of a security is made through an exchange or otherwise through brokers

- (a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment that it is held for the selling broker to be made to him; and
- (b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or the like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be further negotiated by the purchaser in the possession of the purchaser or sends it to him or to a person designated by him or at the purchaser's request causing an acknowledgment that it is held for the purchaser to be made to him.

Section 8—315. Action Against Purchaser Based Upon Wrongful Transfer.—(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (Section 8—311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

Section 8—316. Purchaser's Right to Requisites for Registration of Transfer on Books.—(1) Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with the demand gives the purchaser the right to reject or rescind the transfer.

(2) Unless otherwise agreed, the purchaser's demand for such requisites must be made within a reasonable time not exceeding three months from his receipt of the security.

Section 8—317. Attachment or Levy Upon Security.—(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Section 8—318. No Conversion by Good Faith Delivery.—An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged

or delivered them according to the instructions of his principal is not liable for conversion although the principal had no right to dispose of them.

Section 8—319. Statute of Frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless

- (a) there is some writing sufficient to indicate that a contract for sale has been made and signed by the party against whom enforcement is sought or by his authorized agent or broker; or
- (b) there has been delivery of the security or payment has been made but only to the extent of such delivery or payment; or
- (c) confirmation of the sale or purchase has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after it is received; or
- (d) the party against whom enforcement is sought admits in his pleading or otherwise in court that in fact a contract for sale was made.

Part 4

Registration

Section 8—401. Duty of Issuer to Register Transfer.

—(1) Where a person presents a security to the issuer with the request to register transfer of the security, the issuer must register the transfer as requested if

- (a) the security is fully indorsed for transfer in conformity with the following section; and
- (b) the issuer has no knowledge of the unrightfulness of the transfer and no duty to inquire into its rightfulness (Section 8—403); and
- (c) proof is submitted of payment or waiver of any taxes applicable to the transfer or of consent to transfer.

(2) Where the issuer has registered a transfer pursuant to this section, he is not liable to any person suffering loss as a result of such registration.

Section 8—402. Sufficiency of Indorsement.—(1) A security is fully indorsed for transfer when the indorsements on or with it are sufficient to make the person presenting it a holder of the security.

(2) Unless the issuer has notice that the person signing the indorsement has no power to make the indorsement, the issuer shall not require more evidence than

the following to establish the necessary indorsement: If the person whose indorsement is required (subsection (1) of Section 8—308) is at the time of signing

- (a) an adult not under guardianship, an indorsement signed by him and a guarantee of that signature;
- (b) an infant or an adult under guardianship, an indorsement signed by his guardian, a guarantee of that signature and proof that the person signing was such guardian at the date of signing;
- (c) an individual who is dead and had not indorsed the security, an indorsement signed by the executor or administrator of his estate, a guarantee of that signature and proof that the person signing was such executor or administrator at the date of signing;
- (d) a partnership, an indorsement signed on behalf of that partnership by any partner or an authorized agent of the partnership, a guarantee of that signature, and proof that the person signing was such partner or was such an agent at the date of signing;
- (e) a corporation, an indorsement signed on behalf of the corporation by any of its officers, a guarantee of that signature and proof that the person signing was such officer at the date of signing;
- (f) an executor, administrator, trustee, receiver, or other fiduciary, an indorsement signed by such fiduciary, a guarantee of that signature, and proof that the person signing was such fiduciary at the date of the signing;
- (g) a person not covered by any of the foregoing, papers appropriate to the case, corresponding as nearly as may be to the foregoing.

(3) "A guarantee of that signature" in each of the above cases means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible.

Section 8—403. Duty to Inquire Into Rightfulness of Transfer.—(1) Where a security presented for registration is fully indorsed for transfer, the issuer is under no duty to inquire into the rightfulness of the transfer unless he has notice of another claim to an interest in the security.

(2) The fact that the issuer has notice that the registered owner holds the security for a third person or that the security is registered in the name of a fiduciary does not create a duty of inquiry into the rightfulness of the transfer. If, however, the issuer has notice that the

transfer is to the fiduciary in his individual capacity or that the proceeds of the purchase have been placed in the individual account of the fiduciary or are made payable in cash or to the fiduciary individually or otherwise has reason to know that such proceeds are being used or that the transaction is for the individual benefit of the fiduciary, the issuer is under a duty to inquire into the rightfulness of the transfer.

Section 8—404. Liability for Improper Registration.—When an issuer has registered a transfer of a security to a person not entitled to the security, the issuer on demand must deliver a like security to the owner of the security unless

- (a) the transfer was registered in conformity with Section 8—401; or
- (b) the security had been lost, apparently destroyed or wrongfully taken, and the owner failed to notify the issuer within a reasonable time after he knew or had reason to know of the loss, apparent destruction or taking.

Section 8—405. Lost, Destroyed and Stolen Securities.—(1) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and
- (b) files with the issuer a sufficient indemnity bond; and
- (c) satisfies any other reasonable requisites imposed by the issuer.

(2) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer. Thereupon the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. If it is apparent after reasonable investigation that the issuer will be unable to recover the new security, he may recover from the original owner or the indemnitor for any loss sustained.

Section 8—406. Duty of Authenticating Trustee, Transfer Agent or Registrar.—(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

- (a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has the same obligation to the holder or owner of the security as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

Article 9

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

Part 1

Short Title, Applicability and Definitions

Section 9—101. Short Title.—This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

Section 9—102. Policy and Scope of Article.—(1) Except as provided in Section 9—104 on the exclusion of certain security interests and other transactions, this Article applies so far as concerns any personal property within the jurisdiction of this State

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property including goods, documents, instruments, chattel paper, accounts or contract rights; and also

(b) to any financing sale of accounts, contract rights or chattel paper.

(2) Among the transactions to which this Article applies are those in the form of pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, bailment-lease, trust receipt, other lien or title retention contract and a lease intended as security.

Section 9—103. Accounts, Contract Rights and Equipment Relating to Another State; and Incoming Goods Already Subject to a Security Interest.—(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the state where such office is located.

(2) If the chief place of business of a debtor is in this state, the validity and perfection of a security interest and the possibility and effect of proper filing with regard to equipment of a type which is normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, com-

mercial harvesting equipment, construction machinery and the like), is governed by this Article; otherwise by the law of the state (including the conflict of laws rules) where such chief place of business is located.

(3) If personal property is already subject to a security interest when it is brought into this state, the validity of the security interest is to be determined by the law of the jurisdiction where the property was when the security interest attached, unless the parties understood at that time that the property would be kept in this state and it was brought here within thirty days thereafter for purposes other than transportation through this state. If the security interest was already perfected under the law of the jurisdiction where the property was kept before being brought into this state, the security interest continues perfected here for four months and also thereafter if within the four month period it is perfected here. The security interest may also be perfected here after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was kept before being brought into this state, it may be perfected here; in such case perfection dates from the time of perfection in this state.

Section 9—104. Transactions Excluded From Article.
—This Article does not apply

- (a) to a security interest subject to the Ship Mortgage Act, 1920, or any other statute of the United States to the *extent that such statute regulates the rights of parties to and third parties affected by transactions in particular types of property; or
- (b) to a landlord's lien or a lien on real estate; or
- (c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9—310 on priority of such liens; or
- (d) to an assignment or other transfer of a claim for wages, salary or other compensation of an employee; or
- (e) to an equipment trust covering railway rolling stock; or
- (f) to a transfer of accounts as part of a sale of the business out of which they arose, or a transfer of a contract right to an assignee who is also to do the performance under the contract.

* "exent" in original.

Section 9—105. Definitions and Index of Definitions.

—(1) In this Article unless the context otherwise requires:

- (a) "Account debtor" means the person who is indebted on an account, chattel paper, or contract right;
- (b) "Chattel paper" means a security agreement or lease of a type which is in ordinary course of business transferred by delivery with appropriate indorsement or assignment. When a transaction is evidenced both by chattel paper and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest, and includes contract rights, chattel paper or accounts which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor," unless the context of a particular section otherwise requires, includes the owner of the collateral as well as the person who owes the obligation secured;
- (e) "Documents" means documents of title;
- (f) "Goods" includes all things which are movable at the time the security interest attaches even though they are later affixed to realty, but does not include money, documents of title, instruments, accounts, chattel paper, contract rights and other things in action. "Goods" also includes the unborn young of animals and growing crops;
- (g) "Instrument" means a negotiable instrument (defined in Section 3—104), or a security (defined in Section 8—102) or any other writing not itself a security agreement or lease which evidences a right to the payment of money and is of a type which is in ordinary course of business transferred by delivery. When a transaction is evidenced both by chattel paper and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

- (h) "Security agreement" means an agreement which creates or provides for a security interest;
- (i) "Secured party" means a lender, seller or other person in whose favor there is a security interest or to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the secured party is the trustee or other representative.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account."	Section 9—106.
"Cash proceeds."	Section 9—306(3).
"Consumer goods."	Section 9—109(1).
"Contract right."	Section 9—106.
"Equipment."	Section 9—109(2).
"Farm products."	Section 9—109(3).
"Inventory."	Section 9—109(4).
"Lien creditor."	Section 9—301(3).
"Proceeds."	Section 9—306(3).
"Purchase money security interest."	Section 9—107.
"Value."	Section 9—108(1).

(3) The following definitions in other Articles apply to this Article:

"Check."	Section 3—104.
"Contract for sale."	Section 2—106.
"Holder in due course."	Section 3—302.
"Note."	Section 3—104.
"Sale."	Section 2—106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Section 9—106. Definitions: "Account"; "Contract Right."—"Account" means a right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. A right to wages, salary or other compensation of an employee or a right represented by a judgment is neither a "contract right" nor an "account."

Section 9—107. Definitions: "Purchase Money Security Interest."—A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used; or
- (c) taken by a person who for the purpose of enabling the debtor to pay for or acquire rights in or the use of collateral makes advances or incurs an obligation not more than ten days before or after the debtor receives possession of the collateral even though the value given is not in fact used to pay the price.

Section 9—108. Definitions: "Value"; When After-Acquired Collateral Not Security for Antecedent Debt.

—(1) A person gives "value" for rights in property if he acquires his rights

- (a) in return for any consideration sufficient to support a simple contract including the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) as security for or in total or partial satisfaction of a pre-existing claim; or
- (c) by taking delivery pursuant to a pre-existing contract for purchase.

(2) Where a secured party makes an advance, incurs an obligation or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for such new value and not as security for a pre-existing claim if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made within a reasonable time after the making of the security agreement and pursuant thereto.

Section 9—109. Classification of Goods: "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory."—Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor from whose raising, fattening, grazing or other farming operations they derive or in which they are used. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held or are being prepared for sale or are to be furnished under a contract of service or if they are raw materials, work in process or materials used or consumed in a business. If goods are inventory they are neither farm products nor equipment.

Section 9—110. Sufficiency of Description.—For the purposes of this Article any description is sufficient whether or not it is specific if it reasonably identifies the thing described.

Section 9—111. Applicability of Bulk Transfer Laws.—The creation of a security interest is not a bulk transfer under Article 6 (Section 6—103).

Section 9—112. Where Collateral Is Not Owned by Debtor.—When a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral shall have the same right as the debtor to receive statements under Section 9—208, to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9—505, to obtain injunctive or other relief under Section 9—507 (1) and to recover losses caused to him under Section 9—208 (2). Such owner, rather than the debtor, is entitled to any surplus under Section 9—502 (2) or Section 9—504 (1).

Part 2

Validity of Security Agreement and Rights of Parties Thereto

Section 9—201. General Validity of Security Agreement.—Except as otherwise provided by this Act or by other rule of law or regulation, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any rule of law or regulation governing usury, small loans, retail installment sales, or the like, or extends the application of any such rule of law or regulation to any transaction not otherwise subject thereto.

Section 9—202. Title to Collateral Immaterial.—Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Section 9—203. Enforceability of Security Interest; Formal Requisites.—(1) A security interest is not enforceable against the debtor or third parties unless

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted, a description of the land concerned.

(2) A transaction, although subject to this Article, must also comply with the act, approved the twenty-eighth day of June, one thousand nine hundred forty-seven (Pamphlet Laws 1110) known as the "Motor Vehicle Sales Finance Act," the act approved the eighth day of April, one thousand nine hundred thirty-seven (Pamphlet Laws 262), known as "Consumer Discount Company Act" and the act approved the seventeenth day of June, one thousand nine hundred fifteen (Pamphlet Laws 1012), entitled "An act regulating the business of loaning money in sums of three hundred (\$300) dollars or less, either with or without security, to individuals pressed by lack of funds to meet immediate necessities; fixing the rates of interest and charges therefor; requiring the licensing of lenders; and prescribing penalties for the violation of this act," in so far as any such statute by its terms applies to the transaction.

Section 9—204. When Security Interest Attaches; After-Acquired Property; Buyer's Enabling Advance; Future Advances.—(1) A security interest cannot attach until an agreement is made that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement *postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

- (a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;
- (b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;
- (c) in a contract right until the contract has been made;
- (d) in an account until it comes into existence.

* "postponed" in original.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure any advances made or other value given at any time pursuant to the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease, land purchase mortgage or contract may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) A security agreement may provide that collateral under it shall secure future advances.

(6) When a buyer makes an advance or otherwise gives new value for the purpose of enabling his seller to obtain or manufacture goods, a security interest in favor of the buyer attaches to the goods by virtue of the contract for sale as soon as they have become identified to the contract.

Section 9—205. Use or Disposition of Collateral Without Accounting Permissible.—A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral.

Section 9—206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties by Security Agreement.—(1) An agreement by a buyer of consumer goods as part of the contract for sale that he will not assert against an assignee any claim or defense arising out of the sale is not enforceable by any person. If such a buyer as part of one transaction signs both a negotiable instrument and a security agreement even a holder in due course of the negotiable instrument is subject to such claims or defenses if he seeks to enforce the security interest either by proceeding under the security agreement or by attaching or levying upon the goods in an action upon the instrument.

(2) In all other cases an agreement by a buyer that he will not assert against an assignee any claim or defense which he may have against the seller is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(3) When a seller retains a purchase money security interest in goods the sale is governed by the Article on Sales (Article 2) and a security agreement cannot limit or modify warranties made in the original contract of sale.

Section 9—207. Rights and Duties When Collateral is in Secured Party's Possession.—(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless the debtor assumes to do so.

(2) Unless otherwise agreed, and subject to the provisions of Part 5 after default, when collateral is in the secured party's possession

- (a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody and preservation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
- (e) the secured party may not make any use of the collateral except in the exercise of his duty of custody and preservation, but may repledge it upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

Section 9—208. Request for Statement of Account or List of Collateral.—(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

Part 3

Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority

Section 9—301. Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor."—(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons as to whom a perfected security interest is subordinate (subsection (2) of Section 9—303);
- (b) a subsequent secured party who becomes such without knowledge of the earlier security interest and perfects his interest before the earlier security interest is perfected;

- (c) a lien creditor who becomes such without knowledge of the security interest and before it is perfected;
- (d) a transferee in bulk or other buyer not in ordinary course of business to the extent that he receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase-money security interest before or within ten days after he gives value, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. A creditor who secures the issuance of process which within a reasonable time results in attachment, levy or the like is a lien creditor from the time of issuance of the process.

Section 9—302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.—(1) A financing statement must be filed to perfect all security interests except those covered in subsection (2) and the following:

- (a) a security interest in collateral in possession of the secured party under Section 9—305;
- (b) a security interest in instruments or documents perfected without delivery under Section 9—304;
- (c) a purchase money security interest in farm equipment having a purchase price not in excess of \$2500; but filing is required if the equipment is part of the realty under Section 9—313 or a motor vehicle required to be licensed;
- (d) a purchase money security interest in consumer goods; but filing is required if the goods are part of the realty under Section 9—313 or a motor vehicle required to be licensed;

- (e) an assignment of accounts or contract rights which either is for the purpose of collection only or does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;
 - (f) if an assignee finances accounts, chattel paper or contract rights in the ordinary course of his business a further assignment by him of any such collateral already assigned to him.
- (2) The filing provisions of this Article do not apply to the assignment of a perfected security interest, or to a security interest
- (a) in property subject to a statute of the United States which provides for national registration or filing of all security interests in such property; or
 - (b) in property subject to a statute of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Compliance with any such statute is equivalent to filing under this Article.

Section 9—303. When Security Interest is Perfected; Persons Who Take Priority Over Perfected Security Interest; Perfection of Security Interest in Instruments and Documents.—(1) Except as provided in Section 9—103 with reference to property which is already subject to a perfected security interest when it is brought into this state, a security interest is perfected

- (a) if filing is required under Section 9—302 (1), at the time of filing, except that if filing occurs before the security interest attaches, the security interest is perfected when it attaches;
 - (b) if no filing is required under Section 9—302 (1), at the time specified in Section 9—304 or 9—305 in cases falling under those sections and in all other cases at the time the security interest attaches;
 - (c) in the cases covered by Section 9—302 (2) when, as may be provided in the relevant statute, the security interest is registered or filed or when the security interest is noted on the certificate of title.
- (2) A perfected security interest may be or become subordinate to the rights of the following persons:
- (a) a buyer in ordinary course or other buyer taking free of a security interest under Section 9—307;

- (b) a purchaser of chattel paper under Section 9—308;
- (c) a holder in due course of a negotiable instrument or a holder to whom a negotiable document has been duly negotiated or a bona fide purchaser of a security under Section 9—309;
- (d) a person having a lien for services or materials under Section 9—310;
- (e) a secured party with a previously perfected security interest.

(3) Except as provided in Section 9—304, a security interest in documents or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession of the collateral.

Section 9—304. Temporarily Perfected Security Interest in Instruments or Documents Without Transfer of Possession.—(1) A security interest in instruments or documents (even though not in the possession of the secured party) is perfected against all creditors of the debtor and against all transferees other than those specified in Section 9—309 for twenty-one days from the time it attaches if the security interest arises by reason of an agreement signed by the debtor under which the secured party makes a new advance, releases a perfected security interest or incurs a new obligation. It ceases to be a perfected security interest and becomes unperfected at the end of the twenty-one day period unless within that period the collateral has come into the possession of the secured party.

(2) A secured party who has possession of instruments or documents may turn over such collateral to the debtor and nevertheless continue to have a perfected security interest under this section for twenty-one days from the time of turning over.

Section 9—305. When Possession by Secured Party Perfects Security Interest Without Filing; Field Warehousing; Filing Required.—(1) When goods, instruments, documents or chattel paper come into or are in the possession of a secured party as collateral his security interest in that collateral is perfected without filing from the time he takes possession and while the collateral remains in his possession. If the collateral is held by a bailee the time of perfection is when the bailee receives notification of the secured party's interest. When a security agreement contemplates possession by a secured party before default, the security interest may attach as provided in Section 9—204 before such possession is obtained but, unless perfected under Section 9—304, is perfected only from the time possession is obtained and without relation back.

(2) When goods are stored under a field warehousing or similar arrangement on premises which are part of the place of business of the debtor or which are within the debtor's premises or substantially contiguous thereto, a security interest in the goods can be perfected only by filing notwithstanding delivery of a warehouse receipt covering such goods and even though the storage premises are identified as being under independent control by sign, presence of custodian and the like.

Section 9—306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.—(1) When collateral is sold, exchanged, collected or otherwise disposed of by the debtor the security interest continues on any identifiable proceeds received by the debtor except as otherwise provided in subsection (2); the security interest also continues in the original collateral unless the debtor's action was authorized by the secured party in the security agreement or otherwise or unless it is otherwise provided in Sections 9—301, 9—303 (2), 9—307, 9—308 and 9—309. The security interest in proceeds is a perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

- (a) the financing statement covering the original collateral also includes the proceeds received on disposition of such collateral; or
- (b) it is perfected before the expiration of the ten day period.

(2) In insolvency proceedings a secured party with a perfected security interest has a right to the cash and bank accounts of the debtor equal to the amount of cash proceeds received by the debtor within ten days before the institution of such proceedings less the amount of such proceeds received by the debtor and paid over to the secured party during the ten day period, but no other right to or lien on cash proceeds not subjected to his control before insolvency proceedings are instituted. Nothing in this subsection shall affect any right of set-off which might otherwise exist.

(3) On sale or exchange of collateral or collection of accounts or chattel paper by the debtor, "proceeds" are received and when the right to payment has been earned under a contract right, the resulting account is a "proceed." "Cash proceeds" include checks and money received on disposition of collateral or on collection or transfer of non-cash proceeds but not notes, time bills, chattel paper, accounts and goods received in exchange.

(4) If the proceeds resulting from a sale or other disposition of inventory consists of chattel paper, nothing in this section prevents a transfer thereof for new value

in the ordinary course of business, and the security interest or any other right of any such transferee shall have priority over the security interest based on a claim to proceeds under subsection (1).

(5) If collateral which has been sold is returned to the debtor, the following rules determine the priorities:

- (a) As between the debtor and a secured party to whom the indebtedness originally secured by the collateral has not been paid, the original security interest continues;
- (b) As between the debtor and an unpaid transferee of the chattel paper arising from the sale, the transferee shall have a security interest in the property returned, but such security interest must be perfected for protection against third parties;
- (c) The security interest of an unpaid transferee under (b) shall have priority over a security interest claimed under (a).

Section 9—307. Buyers of Goods.—(1) In the case of inventory, and in the case of other goods as to which the secured party files a financing statement in which he claims a security interest in proceeds, a buyer in ordinary course of business takes free of a security interest even though perfected and even though the buyer knows of the terms of the security agreement.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$2500 (other than goods or equipment which are part of the realty, see Section 9—313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

Section 9—308. Security Interest in Chattel Paper Without Transfer of Possession.—Filing with regard to chattel paper not transferred to the possession of the secured party perfects a security interest in such paper against all creditors of the debtor and all transferees except a purchaser for new value and in the ordinary course of his business who takes possession of the paper and who does not have actual knowledge that the specific chattel paper is subject to a security interest.

Section 9—309. Purchasers of Instruments and Documents.—Nothing in this Article except Section 9—206 (1) limits the rights of a holder in due course of a negotiable instrument (Section 3—302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7—502) or a bona fide purchaser of

a security (Section 8—301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

Section 9—310. Priority of Certain Liens Arising by Operation of Law.—When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Section 9—311. Alienability of Debtor's Rights; Judicial Process.—The debtor's rights in collateral

- (a) are alienable, although the security agreement may make disposition without the secured party's consent a default; and
- (b) may be reached by attachment, levy, garnishment or other appropriate judicial process.

Section 9—312. Conflicting Security Interests; General Rules of Priority.—When conflicting perfected security interests attach to the same collateral, such interests rank in the order of time of perfection with the following exceptions:

(1) An interest which attaches after filing takes priority from the time of filing, but in case of conflict this rule is subject to the rules stated in the following subsections.

(2) A secured party who has a perfected security interest and who makes later advances to the debtor on the same collateral and under the same security agreement takes priority as to the later advances from the time when his security interest was originally perfected.

(3) A secured party who has a perfected security interest and who acquires rights in after-acquired collateral under a term in the security agreement takes priority as to such rights from the time when his security interest was originally perfected, whether or not he makes advances on the after-acquired collateral, except as otherwise provided in subsection (4).

(4) A purchase money security interest has priority over a conflicting interest in the same collateral which is claimed under an after-acquired property clause if the purchase money security interest is perfected at the time the debtor receives the collateral or within ten days thereafter and, where the collateral is inventory, if before the debtor receives it the purchase money party also notifies any secured party who has made a prior filing covering inventory of the type concerned. Such

notification must describe the inventory concerned, state that the interest is a purchase money security interest and specify its amount. If, however, the interest claimed under an after-acquired property clause is itself a purchase money security interest, the rule stated in subsection (5) applies.

(5) When there are conflicting purchase money security interests, the interest of a seller or of a secured party whose advance was used at his direction to pay a seller takes priority if he has perfected his interest at the time the debtor receives the collateral or within ten days thereafter. In any other case of conflicting purchase money security interests they rank equally.

(6) When the collateral is crops the interest of a later secured party who, in order to enable the debtor to produce them, makes a new advance, incurs a new obligation, releases a perfected security interest or gives other new value during the production season or not more than three months before the crops are planted or otherwise become growing crops, takes priority over the interest of an earlier secured party to the extent that the earlier interest secured obligations (such as rent, interest or mortgage principal amortization) due more than six months before the crops are planted or otherwise become growing crops.

(7) Section 9—313 on goods which are part of the realty, Section 9—314 on goods which are affixed to other goods and Section 9—315 on goods which are commingled or processed state rules of priority which supplement the rules stated in this section.

Section 9—313. Priority When Goods Are Part of Realty.—(1) When under other rules of law goods are so affixed or related to the realty as to be a part thereof, a security interest in such goods which attaches before they become part of the realty takes priority as to such goods over the claims of all persons who have an interest in the realty except

- (a) a subsequent purchaser for value of any interest in the realty; or
- (b) a subsequent judgment creditor with a lien on the realty; or
- (c) a prior encumbrancer of the realty to the extent that he makes subsequent advances

provided that the purchaser or lien creditor becomes such or the prior encumbrancer makes such advances without knowledge of the security interest and before its perfection. A purchaser of the realty at a foreclosure sale is a subsequent purchaser within this Section unless he was the prior encumbrancer.

(2) When under subsection (1) a secured party has priority over the claims of all persons who have an interest in the realty he may on default subject to the provisions of Part 5 remove his collateral from the realty but he must reimburse any encumbrancer or owner of the realty who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the realty caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 9—314. Priority When Goods Are Affixed to Other Goods.—(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section “accessions”) over the claims of all persons to the whole except

- (a) a subsequent purchaser of the whole for value; or
- (b) a subsequent judgment creditor with a lien on the whole; or
- (c) a prior secured party with a security interest in the whole to the extent that he makes subsequent advances

provided that the purchaser or lien creditor becomes such or the prior secured party makes such advances without knowledge of the security interest in the accessions and before its perfection.

(2) Where under subsection (1) a secured party has an interest in accessions which has priority over the claims of all persons to the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse a person with an interest in the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Section 9—315. Priority When Goods Are Commingled or Processed.—(1) If raw materials, component parts or other goods which contribute to a product are manufactured, processed or commingled so that their identity is lost, a security interest in any of them continues on the product or resulting mass if the security agreement so provides or if the secured party has not

acquiesced in the loss of identity. The security interest continues as a perfected security interest if the financing statement indicates that the interest covers the product or mass or, even though the statement does not so indicate, if the secured party did not acquiesce in the loss of identity.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Section 9—316. Priority Subject to Subordination.—Nothing in this Article prevents subordination by agreement by any person entitled to priority.

Section 9—317. Secured Party Not Obligated on Contract of Debtor.—A contract made by a debtor concerning collateral does not impose a personal obligation on the secured party merely because of his security interest or his authority given to the debtor to dispose of or use the collateral.

Section 9—318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.—(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9—206 the rights of an assignee are subject to

- (a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment or of the arrangement for assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) When an assignee permits the assignor to collect accounts or leaves or puts the assignor in possession of chattel paper which does not specify a place of payment other than the assignor's place of business, an account debtor is authorized to pay the assignor until he receives notification that payment is to be made to the assignee.

(4) A term prohibiting assignment of an account or contract right is ineffective. Before making payment, an account debtor may, however, require an assignee to furnish reasonable proof of the making of the assignment. Until an assignee furnishes reasonable identification of the account or contract right assigned, the account debtor may make payment to the assignor.

Part 4

Filing

Section 9—401. Place of Filing; Erroneous Filing; Removal of Collateral.—(1) If filing is required by this Article (subsection (1) of Section 9—302) in order to perfect a security interest, the place of filing is as follows:

- (a) when the collateral is accounts other than those arising from the sale of farm products by a farmer or is chattel paper, contract rights, inventory or equipment other than equipment used in farming operations, then in the office of the Secretary of Commonwealth and in addition if all of the debtor's places of business are in a single county, in the office of the prothonotary of that county;
- (b) when the collateral is consumer goods, equipment used in farming operations, farm products, or accounts arising from the sale of farm products by a farmer, then in the office of the prothonotary of the county of the debtor's residence or if the debtor is not a resident of this State then in the office of the prothonotary of the county where the goods are kept, and in addition when the collateral is crops in the office of the prothonotary in the county where the land on which the crops are growing or to be grown is located;
- (c) when the collateral is goods which are or are to be so affixed to realty as to be a part thereof, then in the office where a mortgage on the realty concerned would be filed or recorded.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing was proper and with regard to all collateral against any person who has knowledge of the filing of a financing statement which indicates that a security interest in all collateral wherever located was intended.

(3) A filing which is made in the proper county in this state remains effective for one hundred and twenty days after the debtor's residence or place of business or the location of the collateral is changed to another county of this state but becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period.

(4) When collateral is brought into this state from another jurisdiction, the rules stated in Section 9—103 apply to determine when filing is necessary in this state.

Section 9—402. Formal Requisites of Financing Statement.—(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of property covered. When the collateral is crops growing or to be grown or goods affixed or to be affixed to realty so as to be a part thereof the statement must also contain a description of the land or realty concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties. When the collateral is goods affixed or to be affixed to realty, the collateral must be described by item and not by type.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under Section 9—306 (1), if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)
 Address:
 Name of secured party (or assignee)
 Address:

1. This financing statement covers the following types (or items) of property:

(list)

2. (If collateral is crops) The above listed crops are growing or are to be grown on:

(describe land)

3. (If collateral is goods affixed or to be affixed to realty) The above described goods are affixed or to be affixed to:

(describe realty)

4. (If proceeds or products of collateral are claimed) The following (proceeds) (products) of the property are also covered:

(list)

(Signature of Debtor or Assignor)

(Signature of Secured Party or Assignee)

Section 9—403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officers.—(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) A filed financing statement which states the maturity date of the obligation secured is effective until that date and thereafter until it lapses under subsection (3). Any other filed financing statement is effective until it lapses under subsection (3). Upon such lapse or upon the filing of a statement of termination under Section 9—404, the security interest becomes unperfected with regard to rights which accrue thereafter.

(3) At any time after the maturity date stated in a financing statement, or at any time after five years from the date of filing a financing statement which states no maturity date, a filing officer may notify a secured party at his address given in the statement that the effectiveness of the statement will lapse unless a continuation statement has been filed not later than sixty (60) days following the date of notification. Any such continuation statement shall be signed by the secured party, shall identify the original statement by file number and shall state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years. At any time after five years from the date of filing a continuation statement the filing officer may again proceed under this subsection. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it and the index.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the names of the debtor and the secured party and shall note in the index the file number and the addresses of debtor and secured party given in the statement.

(5) The filing fee for an original or a continuation statement shall be one dollar fifty cents (\$1.50).

Section 9—404. Statement of Termination of Financing.—(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a signed statement to that effect. If the secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. Unless a statute on disposition of public records provides otherwise, the filing officer shall remove the financing statement from the files and return the termination statement and the financing statement to the secured party.

(3) The fee for filing such a termination statement shall be seventy-five cents (\$.75).

Part 5

Default

Section 9—501. Index of Rights on Default; Procedure When Security Agreement Covers Both Real and Personal Property.—(1) When a debtor is in default under the security agreement a secured party may reduce his claim to judgment. If the collateral is accounts, chattel paper, contract rights, or instruments, he may in addition proceed under Section 9—504, or under Section 9—502 for a time and thereafter under Section 9—504. If the collateral is documents, he may in addition proceed under Section 9—504 either as to the documents or as to the goods covered thereby. If the collateral is goods, he may in addition do one or more of the following (except that he cannot accept the collateral in discharge of the obligation under Section 9—505 and also recover a deficiency under Section 9—504):

- (a) foreclose the security interest by any available judicial procedure;

- (b) take possession of the collateral under Section 9—503;
- (c) prepare or process the collateral for disposition as provided in Section 9—504;
- (d) sell and recover a deficiency as provided in Section 9—504;
- (e) accept the collateral in discharge of the obligation as provided in Section 9—505.

(2) After default a secured party in possession has the rights and duties provided in Section 9—207 and a debtor has

- (a) a right of redemption as provided in Section 9—506; and
- (b) a right as provided in Section 9—507 to require that the secured party realize on his collateral in accordance with this Article.

(3) The enumeration of rights in subsections (1) and (2) does not purport to be exhaustive. The rules stated in this Part which give rights to the debtor and impose duties on the secured party may be waived or varied only as provided in this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed under the law relating to foreclosure of real estate mortgages as to both the real and the personal property. If the secured party proceeds under the real estate mortgage law, the provisions of this Part do not apply.

Section 9—502. Rights of Assignee When Assignor Defaults.—(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligors on an instrument to make payment to him whether or not the assignor was therefore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9—306.

(2) When the secured party is by agreement entitled to charge back uncollected instruments, accounts, chattel paper or contract rights or is otherwise entitled to full or limited recourse against the debtor, a secured party who takes control of collections must proceed in a commercially reasonable manner to realize upon the collateral, and may deduct his reasonable expenses of realization from the collections. If so agreed, the debtor is entitled to any surplus in the net amount realized, or is liable for any deficiency, or both; if the agreement is silent and if the transaction between the debtor and the secured party is in fact a sale, the debtor is not

entitled to any surplus and is not liable for any deficiency, but if it is in fact a loan he is entitled to any surplus and is liable for any deficiency.

Section 9—503. Secured Party's Right to Take Possession After Default.—Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9—504. A debtor may request the secured party to remove collateral from the debtor's premises after a reasonable time for its disposition has passed. If the secured party fails to remove the collateral within a reasonable time after the receipt of such a request, the debtor may remove and store it.

Section 9—504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.—(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

- (a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like to the extent the recovery thereof is not prohibited by law or agreement;
- (b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;
- (c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed.

If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides,

(2) Disposition of the collateral may be at public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market the secured party must give to the debtor, and to any other secured party who has a security interest in the collateral to be disposed of and who has filed a financing statement or is known to the secured party making the disposition, reasonable notification of the time and place of any public or private sale and appropriate notification of any other intended disposition. Notification may be sent to addresses given in a financing statement if the secured party has no knowledge of different addresses. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(3) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all rights of the debtor, discharges the security interest under which it is made and any security interest or lien subordinate thereto, and the purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

- (a) in the case of a judicial sale if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party or other bidders; or
- (b) in any other case if the purchaser acts in good faith.

Section 9—505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.—(1) In the case of a purchase money security interest in consumer goods if the debtor has paid sixty per cent of the cash price and has not signed after default a statement renouncing his rights a secured party who has taken possession of collateral must dispose of it under Section 9—504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9—507 (1) on secured party's liability.

(2) In any other case a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such pro-

posals shall be given to the debtor and to any other secured party who has a security interest in the collateral and who has filed a financing statement or is known to the secured party in possession. If the debtor or other person entitled to receive notification objects within thirty days from receipt of the notification the secured party must dispose of the collateral under Section 9—504, but in the absence of such objection within said thirty days the secured party may hold the collateral or dispose of it free from the requirements of this Article.

Section 9—506. Debtor's Right to Reclaim Collateral.—At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9—504 or before the obligation has been discharged under Section 9—505 (2) the debtor may reclaim the collateral by tendering payment of all sums due under the defaulted agreement as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing for disposition.

Section 9—507. Secured Party's Liability for Failure to Comply With This Part.—(1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods the debtor has a right to recover in any event an amount not less than the credit service charge or time price differential plus 10 per cent of the cash price or principal amount of the debt.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. The term "commercially reasonable" includes among other things, obtaining approval of the secured party's plan of disposition in a judicial proceeding or by a bona fide creditors' committee or representative of creditors.

Article 10

Effective Date and Repealer

Section 10—101. *Effective Date.*—This Act shall become effective at 12:01 A. M. on July first, one thousand nine hundred fifty-four.

Section 10—102. *Specific Repealer.*—The following acts and parts of acts and all amendments thereof are hereby repealed to the extent hereinafter specified:

The act, approved the twenty-seventh day of February, one thousand seven hundred ninety-seven (3 Sm. L. 278), entitled “An Act to devise a particular form of promissory note, not liable to any plea of defalcation or set-off,” absolutely.

Section 10 of the act, approved the fifth day of April, one thousand eight hundred forty-nine (Pamphlet Laws 424), entitled “An act to vacate Long lane, in the county of Philadelphia; relative to Niles and Forbes streets, in the city of Pittsburgh; authorizing the town council of the borough of Muncy, to borrow money; in reference to Richmond district, in the county of Philadelphia; in reference to promissory notes and counterfeit endorsements; to Clarion and Paint townships, in Clarion county; to public roads in the county of Mifflin; authorizing the councils of the city of Lancaster, to open an alley; confirming the plan of survey of the eastern section of the Kensington district of the Northern Liberties, and relating to certain streets therein; relative to a road in Towamensing and Lower Towamensing townships, Carbon county; and supplementary to the act relating to roads in Middletown township, Delaware county,” absolutely.

The act, approved the fourteenth day of December, one thousand eight hundred sixty-three (1864 Pamphlet Laws 1127), entitled “An act relating to the liens of common carriers, and others,” in so far as it relates to warehousemen and carriers in respects specifically dealt with in this act.

The act, approved the first day of May, one thousand eight hundred seventy-three (Pamphlet Laws 87), entitled “An act to authorize the registry or transfer of certain bonds,” absolutely.

The act, approved the twenty-eighth day of April, one thousand eight hundred eighty-seven (Pamphlet Laws 73), entitled “An act to authorize chattel mortgages in this Commonwealth upon iron ore, pig-iron, blooms, steel and iron nails, steel ingots, and billets, rolled or hammered steel, in sheets, bars or plates, and all steel and iron castings of every description, not in place,” absolutely.

The act, approved the thirteenth day of May, one thousand eight hundred eighty-nine (Pamphlet Laws 197), entitled "An act to authorize mortgages in this Commonwealth upon the purchase money, rentals or royalty, reserved by the grantors or lessors in conveyances or leases of coal or other minerals, in, under or upon any land, together with the right to mine and carry away the same, during a term of years or perpetually, as long as the coal and other minerals may last," absolutely.

The act, approved the sixteenth day of May, one thousand nine hundred one (Pamphlet Laws 194), entitled "An act relating to negotiable instruments," absolutely.

The act, approved the eleventh day of March, one thousand nine hundred nine (Pamphlet Laws 19), entitled "An act relating to warehouse receipts," absolutely.

The act, approved the fifth day of May, one thousand nine hundred eleven (Pamphlet Laws 126), entitled "An act to make uniform the law of transfer of shares of stock in corporations," absolutely.

The act, approved the ninth day of June, one thousand nine hundred eleven (Pamphlet Laws 838), entitled "An act to make uniform the law of bills of lading; and providing penalties for the violation thereof," absolutely.

The act, approved the nineteenth day of May, one thousand nine hundred fifteen (Pamphlet Laws 543), entitled "An act relating to the sale of goods," absolutely.

The act, approved the twenty-third day of May, one thousand nine hundred nineteen (Pamphlet Laws 262), entitled "An act relative to the sale in bulk of the whole or a large part of a stock of goods, wares, or merchandise of any kind, or of fixtures, or of goods, wares, or merchandise of any kind and fixtures, not in the ordinary course of business; providing certain requirements therefor, and imposing certain duties upon the seller and buyer and auctioneers and agents; making their violation a misdemeanor," absolutely.

The act, approved the twelfth day of June, one thousand nine hundred nineteen (Pamphlet Laws 453), entitled "An act to relieve banks, trust companies, and bankers from liability to depositors because of the nonpayment, through mistake or error and without malice, of a check which should have been paid, unless the depositor shall allege and prove actual damage by reason of such nonpayment, and limiting the liability in such event," absolutely.

The act, approved the seventh day of May, one thousand nine hundred twenty-five (Pamphlet Laws 557), entitled "An act to provide for the sale of property

against which a common law lien may exist for repairs and material; and the method of procedure thereon," in so far as the provisions thereof are inconsistent with the provisions of this act.

The act, approved the twelfth day of May, one thousand nine hundred twenty-five (Pamphlet Laws 603), entitled "An act concerning conditional sales; and to make uniform the law relating thereto," absolutely.

The act, approved the twenty-ninth day of March, one thousand nine hundred twenty-seven (Pamphlet Laws 73), entitled "An act relating to the effect of the negotiation, under certain conditions, of security receipts and equipment trust certificates as therein defined," in so far as the provisions thereof are inconsistent with the provisions of this act.

The act, approved the seventh day of March, one thousand nine hundred twenty-nine (Pamphlet Laws 14), entitled "An act in furtherance of the policy of the Federal Government to aid in the development and fostering of a United States Merchant Marine; authorizing the recording of certain chattel mortgages on vessels when in course of construction or otherwise; prescribing the effect of such recording with respect to creditors of the owners of such vessels and with respect to mortgages and purchasers or transferees of such vessels; defining the priorities of such chattel mortgages in the proceeds realized from the sale of such vessels on any process issuing under the laws of this Commonwealth," absolutely.

The act, approved the twelfth day of June, one thousand nine hundred thirty-one (Pamphlet Laws 568), entitled "An act to expedite and simplify the collection and payment by banks of checks and other instruments for the payment of money," absolutely.

Sections 911 and 912 of the act, approved the fifteenth day of May, one thousand nine hundred thirty-three (Pamphlet Laws 624), entitled "An act relating to the business of banking, and to the exercise of fiduciary powers by corporations; providing for the organization of corporations with fiduciary powers, and of banking corporations, with or without fiduciary powers, including the conversion of National banks into State banks, and for the licensing of private bankers; defining the rights, powers, duties, liabilities, and immunities of such corporations, of existent corporations authorized to engage in a banking business, with or without fiduciary powers, of private bankers, and of the officers, directors, trustees, shareholders, attorneys, and other employes of all such corporations or private bankers, or of affiliated corporations, associations, or persons; restricting the exercise of banking powers by any other corporation,

association, or person, and of fiduciary powers by any other corporation; conferring powers and imposing duties upon the courts, prothonotaries, recorders of deeds, and certain State departments, commissions, and officers; imposing penalties; and repealing certain acts and parts of acts," as added by the act, approved the twenty-ninth day of July, one thousand nine hundred forty-one (Pamphlet Laws 586), absolutely.

The act, approved the tenth day of July, one thousand nine hundred forty-one (Pamphlet Laws 307), entitled "An act with reference to trust receipts and pledges of personal property unaccompanied by possession in the pledgee, and to make uniform the law with reference thereto," absolutely.

The act, approved the thirty-first day of July, one thousand nine hundred forty-one (Pamphlet Laws 606), entitled "An act relating to the sale, transfer, assignment and pledge of accounts receivable," absolutely.

The act, approved the first day of June, one thousand nine hundred forty-five (Pamphlet Laws 1358), entitled "An act relating to chattel mortgages on any chattel or chattels of any kind or description, including, but not limited to, livestock, poultry, farm machinery, farm equipment and crops, grown, growing or to be grown; designating the operation and effect of the lien of such mortgages; providing for the filing, indexing and docketing of such mortgages and related instruments in prothonotaries' offices; and prescribing prothonotaries' fees; providing for the filing in Pennsylvania of similar lien instruments originally filed or recorded in other states; regulating the assignment, release, satisfaction and extension of the lien of such mortgages; prescribing methods of foreclosure; defining defaults and violations; and fixing penalties," absolutely.

The act, approved the tenth day of June, one thousand nine hundred forty-seven (Pamphlet Laws 529), entitled "An act concerning liens of factors on merchandise, and on any proceeds arising from the sale of such merchandise, and defining 'factor' as one that lends or advances money on the security of merchandise, whether or not employed to sell such merchandise," absolutely.

The act, approved the twenty-eighth day of June, one thousand nine hundred forty-seven (Pamphlet Laws 1141), entitled "An act limiting and regulating liability of goods, wares and merchandise purchased under bailment lease contracts for subsequent purchases; and limiting the rights of bailors in certain cases," absolutely.

Section 10—103. General Repealer.—Except as provided in the following section, all acts and parts of acts inconsistent with this Act are hereby repealed.

Section 10—104. Laws Not Repealed.—In respects not specifically dealt with herein, the Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (Section 1—201).

APPROVED—The 6th day of April, A. D. 1953.

JOHN S. FINE

No. 2

AN ACT

To further amend the act, approved the twenty-second day of June, one thousand nine hundred thirty-one (Pamphlet Laws 594), entitled "An act establishing certain township roads as State highways; authorizing their construction, maintenance, and improvement under certain conditions and restrictions; limiting the obligation of the Commonwealth in the construction of certain structures located on such highways; conferring certain powers upon the Department of Highways and local authorities, persons, associations and corporations for sharing the cost of the maintenance and construction of such highways; and making an appropriation to carry out the provisions of said act," by deleting a route in Lancaster County.

State highways.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Route 36084, in Lancaster County, established by act of June 22, 1931, P. L. 594, as amended by act of July 12, 1935, P. L. 806, deleted.

Section 1. The following route established by the act, approved the twenty-second day of June, one thousand nine hundred thirty-one (Pamphlet Laws 594), entitled "An act establishing certain township roads as State highways; authorizing their construction, maintenance, and improvement under certain conditions and restrictions; limiting the obligation of the Commonwealth in the construction of certain structures located on such highways; conferring certain powers upon the Department of Highways and local authorities, persons, associations and corporations for sharing the cost of the maintenance and construction of such highways; and making an appropriation to carry out the provisions of said act," as amended by the act, approved the twelfth day of July, one thousand nine hundred thirty-five (Pamphlet Laws 806), is hereby deleted as indicated:

Route 36084.

[Route 36084. Beginning at a point in Conestoga Township at the New Safe Harbor Station of the Columbia and Port Deposit Branch of the Pennsylvania