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# 2006 Uniform Commercial Code Survey: Introduction

By Robyn L. Meadows, Russell A. Hakes, and Stephen L. Sepinuck\*

The march toward the widespread adoption of revised Article 1 continues as the number of states adopting the revision finally passes the halfway mark with legislation to enact the revisions currently pending in several other states.<sup>1</sup> State legislatures continue to reject the conflict of laws rule in the “uniform” version of U.C.C. section 1-301(c)<sup>2</sup> and to differ on enacting the unitary good faith standard in revised section 1-201(b)(20).<sup>3</sup> Revised Article 7 adoptions continue with 28 states

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1. Arizona, California, Florida, Indiana, Iowa, Kansas, Louisiana, Nevada, North Carolina, North Dakota, Rhode Island, and Utah joined the states that had previously enacted the revisions, bringing the total to 29 states plus the U.S. Virgin Islands. Bills to enact the revisions to Article 1 were pending in South Dakota and Pennsylvania. See The National Conference of Commissioners on Uniform State Laws, *UCC Article 1, General Provisions, Bill Tracking*, available at <http://www.nccusl.org> (last visited May 20, 2007).

2. States have unanimously rejected U.C.C. revised section 1-301(c) (2003), which permits commercial parties (not including consumers) to choose the law of any jurisdiction to govern their transaction, regardless of the jurisdiction's relationship to the transaction. States instead have opted to retain the requirement from pre-revision section 1-105(1) that limits the choice of governing law by parties to the law of jurisdictions that bear a reasonable relationship to the transaction. Jack M. Graves, *Party Autonomy in Choice of Commercial Law: The Failure of Revised U.C.C. § 1-301 and a Proposal for Broader Reform*, 36 SETON HALL L. REV. 59, 59-60 (2005) (discussing enacting states rejection of revised U.C.C. section 1-301 and retention of conflict of laws rule from former U.C.C. section 1-105). Only the U.S. Virgin Islands has adopted the more liberal choice of laws provision in revised section 1-301(c). See VI. CODE ANN. tit. 11A, § 1-301 (2003).

3. Compare U.C.C. rev. § 1-201(b)(20) (2001) with U.C.C. § 1-201(19) (2000). Of the recent enacting states, California, Iowa, Kansas, Louisiana, Nevada, North Carolina and North Dakota adopted the definition of good faith, “honesty in fact and the observance of reasonable commercial standards of fair dealing,” in revised Article 1, thereby eliminating the bifurcated standard of good faith for merchants and non-merchants in Articles 2 and 2A. CAL. COM. CODE § 1201(b)(20) (West 2002 & Supp. 2007); 2007 Iowa Legis. Serv. (S.F. 535) § 11 (amending Iowa CODE § 554.1201); 2007 Kansas Laws Ch. 89 (S.B. 183) § 9 and 2007 Kansas Laws Ch. 195 (H.B. 2599) § 47 (amending KAN. STAT. ANN. § 84-1-201); L.A. REV. STAT. ANN. § 10:1-201(b)(20) (2003 & Supp. 2007); NEV. REV. STAT. ANN. § 104.1201(2)(t) (LexisNexis 2007); N.C. GEN. STAT. § 25-1-201(b)(20) (2005 & Supp. 2006); N.D. CENT. CODE § 41-01-09(2)(t) (1999 & Supp. 2007). Arizona, Indiana and Utah have opted to retain the original standard of good faith in Article 1 (“honesty in fact in the conduct or transaction concerned”) and thereby also retaining the bifurcated standard of good faith in Articles 2 and 2A. ARIZ.

now on board with the 2003 revision.<sup>4</sup> Adoption of the 2002 amendments to revised Articles 3 and 4 continue although at a somewhat slower pace than either Articles 1 or 7 with three states joining the two states that had previously adopted these revisions with one enacting bill pending.<sup>5</sup> As has been the case since their promulgation, the 2003 revisions to Article 2 and 2A show no sign of enactment in any state.<sup>6</sup> The question may soon become are further revisions to the revisions to Articles 2 and 2A required before any progress toward enactment can be expected or are piecemeal enactments the best that will come out of this revision.<sup>7</sup>

The survey articles that follow offer some interesting insights into a number of important and sometimes controversial decisions involving the U.C.C. As discussed in both the Leases survey and the Secured Transactions survey, courts continue to wrestle with the distinction between true leases and secured transactions both in the context of goods under the U.C.C. and in other commercial areas in which the courts draw upon the U.C.C. analysis.<sup>8</sup> On an issue of interest to vehicle lessors, the Leases survey also discusses recent courts' consideration of the federal "Graves Amendment" limiting vicarious liability of vehicle lessors for the negligence of their lessees, including one court's decision that the federal statute is an unconstitutional exercise of Congress's power under the Commerce Clause.<sup>9</sup> The Secured Transactions survey reviews and analyzes the much discussed *NetBank, FSB v. Kipperman (In re Commercial Money Center, Inc.)*<sup>10</sup> decision, wherein the Ninth Circuit Bankruptcy Appellate panel found that the right to

REV. STAT. ANN. § 47-1201(B)(20) (Supp. 2006); 2007 Ind. Leg. Serv. P.L. 143-2007 (S.E.A. 419) § 3 (to be codified at IND. CODE ANN. § 26-1-1-201(19)); UTAH CODE ANN. § 70A-1a-201(2)(i) (2001 & Supp. 2007).

4. Arkansas, California, Indiana, Iowa, Kansas, Nevada, North Carolina and Rhode Island enacted the revisions to Article 7 in 2006 or early 2007. Enacting legislation was pending in Pennsylvania as of May 20, 2007. See The National Conference of Commissioners on Uniform State Laws, *UCC Article 7 (2003)*, *Bill Tracking*, available at <http://www.nccusl.org> (last visited May 20, 2007).

5. Arkansas, Nevada and Texas joined Kentucky and Minnesota in enacting the revisions to Articles 3 and 4. The bill to enact these revisions had passed the Oklahoma House of Representatives but had not been acted upon in the Oklahoma Senate as of May 20, 2007. See The National Conference of Commissioners on Uniform State Laws, *UCC Articles 3 and 4*, *Bill Tracking*, available at <http://www.nccusl.org> (last visited May 20, 2007).

6. As of May 2007, only three states, Kansas, Nevada and Oklahoma, have even introduced the revisions to Articles 2 or 2A, with the bills in all three states dying at various stages in the legislative process. For a review of the enactment status of Articles 2 and 2A, see Keith A. Rowley, *UCC Updates: Articles 2 and 2A (2003)*, available at [http://www.law.unlv.edu/faculty/rowley/articles\\_2\\_&\\_2a.htm](http://www.law.unlv.edu/faculty/rowley/articles_2_&_2a.htm) (last visited May 20, 2007).

7. Oklahoma has amended two provisions in its versions of Article 2 and 2A using language from the Articles 2 and 2A revisions. See OKLA. STAT. ANN. tit. 12A, §§ 2-105(1), 2-106(1) & 2A-103(1)(h) (West Supp. 2007) (revising sections 2-105 and 2A-103 to exclude "information" from statutory definition of goods and section 2-106 to exclude "license of information" from definition of sale of goods).

8. See Barry A. Graynor, Teresa Davidson, Edwin E. Huddleson, III, and Stephen T. Whelan, *The Uniform Commercial Code Survey: Leases*, 62 BUS. LAW. 1575, 1576 (2007) and Steven O. Weise, *UCC Article 9: Personal Property Secured Transactions*, 62 BUS. LAW. 1633, 1634 (2007).

9. See Graynor, *supra* note 8, at 1582 (discussing *Graham v. Dunkley*, 827 N.Y.S.2d 513 (Sup. Ct. 2006)).

10. 350 B.R. 465 (B.A.P. 9th Cir. 2006).

receive payments from chattel paper constitutes payment intangibles when the payment rights are stripped from the paper and transferred separately.<sup>11</sup>

In a controversial decision affecting transactions under both Article 3 and Article 8, the New York Court of Appeals held that promissory notes payable to the order of a specific person and issued as part of a sale of a business were Article 8 securities (and thus an alleged oral sale of the notes was not subject to a statute of frauds).<sup>12</sup> This unexpected decision and the possible ramifications of it are discussed and critiqued in the Article 8 survey.<sup>13</sup>

The Payments survey discusses the interaction between federal admiralty law and U.C.C. Article 4A wherein federal courts have permitted attachment under maritime law of funds being transferred electronically when the funds are with the intermediary bank despite Article 4A's prohibition against such attachment.<sup>14</sup>

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11. Weise, *supra* note 8, at 1642.

12. Highland Capital Management LP v. Schneider, 866 N.E.2d 1020 (N.Y. 2007).

13. See Howard Darmstadter, *Article 8—Investment Securities*, 62 BUS. LAW 1623, 1623 (2007).

14. See Stephen C. Veltri & Greg Cavanagh, *Payments: 2006 Developments*, 62 BUS. LAW 1585, 1605 (2007).