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From the Selected Works of Russell A. Hakes

August, 2012

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The Uniform Commercial Code Survey: Introduction

By Russell A. Hakes, Stephen E. Friedman, and Jennifer S. Martin*

The survey that follows highlights the most important developments of 2011 dealing with domestic and international sales of goods, personal property leases, payments, letters of credit, documents of title, investment securities, and secured transactions. Along with the usual descriptions of interesting judicial decisions in these areas, which are highlighted in the survey, there has also been important legislative progress. The 2010 amendments to U.C.C. Article 9,¹ which are proposed to become effective in all jurisdictions that adopt them on July 1, 2013,² have already been adopted in twenty-seven states and nine more have pending legislation.³ Those revisions were summarized in the Introduction to the 2010 survey.⁴ In 2011, the Uniform Law Commission completed a new Uniform Certificate of Title for Vessels Act that is designed to harmonize state certificate of title laws with federal laws regarding vessels and with Article 9 to impede theft and facilitate boat financing.⁵

A very useful survey setting forth legal developments in the United States during the past eight years involving the Convention on Contracts for the International Sales of Goods (the "CISG") follows the Uniform Commercial Code Survey in this issue of *The Business Lawyer*.⁶ There have been a significantly increasing number of cases decided by U.S. courts under the CISG. The survey provides a

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1. See NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS & AM. LAW INST., AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 (2010), available at http://www.law.upenn.edu/bl/archives/ulc/ucc9/2010aug_25amends.htm.

2. See *id.* § 9-801, at 113.

3. See *UCC Article 9 Amendments (2010), Legislative Tracking*, UNIFORM L. COMMISSION, [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC Article 9 Amendments \(2010\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC Article 9 Amendments (2010)) (last visited June 14, 2012).

4. Russell A. Hakes & Stephen L. Sepinuck, *The Uniform Commercial Code Survey: Introduction*, 65 BUS. LAW. 1205, 1205-08 (2010).

5. The final act approved at the 2011 annual meeting of the Uniform Law Commission can be accessed at: <http://www.law.upenn.edu/bl/archives/ulc/cotab/UCOTVA FinalAct 2011.htm>.

6. Ann Morales Olazábal, Robert W. Emerson, Karen D. Turner & René Sacasas, *Global Sales Law: An Analysis of Recent CISG Precedents in U.S. Courts 2004-2012*, 67 BUS. LAW. 1351 (2012).

valuable framework for understanding and applying the CISG. It also provides important background and context for the CISG cases and developments reported in the International Sale of Goods portion of this year's survey.⁷

Although this year saw no new adoptions of the 2003 revisions of Article 7, the year has been relatively active for Article 7 case law, ranging from cases involving peanuts to cigarettes.⁸ One notable case serves as a reminder that parties should bear in mind that even a document that does not immediately appear to be a document of title may in fact satisfy the definition of that term and be treated as such.⁹

Among the interesting judicial decisions of the past year were a number of decisions in which courts grappled with the application of U.C.C. doctrines of negotiability and transfer to mortgage foreclosures affecting statutes of limitation and who is entitled to foreclose.¹⁰ There were also a large number of cases involving leasing. One interesting case on the "true" lease/disguised security interest dichotomy gave an expansive meaning to the concept of remaining economic life, showing that even goods with no value to third parties at the expiration of a lease term might still retain some economic life if it is more cost-effective for the lessee to retain the leased goods than to replace them.¹¹ There were also interesting developments under Article 2, including a case indicating that in some circumstances a trademark licensor might be liable for a breach of warranty claim as an "apparent manufacturer."¹²

7. Gregory M. Duhl, *International Sale of Goods*, 67 *BUS. LAW.* 1337 (2012).

8. See Anthony B. Schutz, *Documents of Title*, 67 *BUS. LAW.*, 1293 (2012).

9. See *id.* at 1294.

10. See Stephen C. Veltri & Greg Cavanagh, *Payments*, 67 *BUS. LAW.* 1257, 1265-69 (2012).

11. See Robert Downey, Barry A. Graynor & Stephen Whelan, *Leases*, 67 *BUS. LAW.* 1245, 1246-47 (2012).

12. See Jennifer S. Martin, *Sales*, 67 *BUS. LAW.* 1227, 1235 (2012).