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2010

Current Status of the UCC

Alvin C. Harrell, *Oklahoma City University School of Law*
Frederick H. Miller



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By Alvin C. Harrell and Fred H. Miller

LEGISLATIVE UPDATE

Nationwide, state legislative activity for uniform acts produced by the Uniform Law Conference (ULC)¹ is off to a significant start in 2010. Focusing on the Uniform Commercial Code (UCC), as of the date of this article there have been 11 introductions.² The current state of the UCC in terms of recent enactments is as follows:

- The 2001 revision of Article 1 has been adopted in 38 states.³
- The 1987/1990 versions of Article 2A have been adopted in every state except Louisiana and Puerto Rico (which are civil law jurisdictions).
- The 2003 and 2005 amendments to Articles 2 and 2A have not been adopted as yet.⁴
- The 1990 revisions of Articles 3 and 4 have been adopted in every state except New York.
- The 2002 amendments to Articles 3 and 4 have been adopted in nine states (including Oklahoma⁵).
- Article 4A has been adopted in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.
- The 1995 revision of Article 5 has been adopted everywhere except Puerto Rico.
- Article 6 has been repealed in 48 states; revised Article 6 has been adopted in California, the District of Columbia and Virginia; original Article 6 remains in effect in Georgia and Maryland.
- The 2003 revision of Article 7 has been adopted in 35 states.
- The 1994 revision of Article 8 has been universally adopted.
- Revised Article 9 has been adopted in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.⁶

UCC AND RELATED DRAFTING AND STUDY COMMITTEE ACTIVITY

Joint Review Committee for UCC Article 9

In early 2008, on the recommendation of the Permanent Editorial Board for the Uniform Commercial Code (PEB), the UCC sponsoring organizations (the ULC and the American Law Institute (ALI)) appointed a Joint Review Committee (JRC) to study issues that have arisen since revised Article 9 was completed in 1999. The JRC issued a report identifying a discreet list of issues and in the fall of 2008 it was authorized to begin drafting a limited range of proposed revisions. In determining what issues to address, the PEB and JRC have been guided by the following principles:

- No change that alters a policy decision made during the process of drafting

revised Article 9 will be made unless it appears that the current provision is creating significant problems in practice;

- changes to the text will focus on areas where the current text is ambiguous or creates substantial problems in practice, or where significant non-uniformity in the states suggests that a revision should be considered; and
- issues should be handled by changes to the comments if the text is sufficiently clear to enable courts to reach the correct result but judicial decisions or problems in practice indicate that clarification might be desirable.

The JRC presented a draft of proposed Article 9 revisions at the ULC's 2009 Annual Meeting and subsequently has been preparing a final draft for approval at the ULC and ALI 2010 Annual Meetings. The process is going well and it is anticipated that the proposed revisions will begin to be introduced in the state legislatures in 2011.⁷ The proposed revisions include a number of beneficial changes, some of which relate to the form of a financing statement, and in this regard the JRC is working closely with the International Association of Commercial Administrators, which publishes the forms and prepares model regulations for central filing offices.⁸

The most difficult and contentious issue for the JRC has been providing further guidance as to the determination of an individual debtor's name for purposes of a financing statement. Currently, Article 9 provides almost no guidance — it merely says to use the individual's name⁹ — and this has resulted in some controversial case law and the adoption in a few states of non-uniform amendments.¹⁰ The JRC has reached a consensus that it will provide the states with the option of adopting either a "safe-harbor" rule or an "only-if" rule. Under the latest draft of the safe-harbor approach, Section 9-503(a)(4)(A) requires a secured party to file under the debtor's individual name but a filing will be sufficient if it uses the name as it appears on the debtor's current driver's license or if it uses the debtor's correct surname and first personal name. The safe-harbor approach should be helpful to filers but does little to reduce the burden and risks the current rule places on searchers.¹¹

The only-if approach provides the same level of certainty for filers while reducing the bur-

den on searchers. The latest draft provides that if a debtor has a current driver's license, the *only* way to perfect will be by using the name on the license. If the debtor does not have a driver's license, the test for sufficiency will be the current test (the debtor's individual name) but with a safe-harbor feature: A filing will be sufficient if it uses the debtor's surname and first personal name. Draft provisions also deal with the potential name-change issues that arise if a financing statement uses the name on a driver's license that expires before the transaction is concluded.

Although the work of the JRC is not done, it has crafted proposed revisions that address problems encountered under current Article 9 and should command the widespread support necessary for rapid enactment.¹²

Articles 2 and 2A and the Uniform Certificate of Title Act

In 2010 the Oklahoma Legislature considered H.B. 3104,¹³ which contained a number of the 2003/2005 amendments to the uniform text of Articles 2 and 2A. UCC Article 2, promulgated in the 1940s, has not been amended since, and produces more litigation and transaction costs than any other UCC Article (since the other UCC Articles have all been subsequently amended to better accommodate changes in practice and technology and to settle ambiguities and splits in court decisions). It is clear that such an update is needed, but it is an unfortunate reality that the public welfare does not always prevail in legislative battles; as a result, narrow interests, perhaps without a fair or full study of the issues, may determine the outcome. The Oklahoma Article 2 and 2A bill, which omits most if not all of the controversial provisions in the 2003 and 2005 uniform text amendments, promises to provide tangible benefits for Oklahoma businesses and citizens. Efforts to update this important area of Oklahoma law, and to preserve it as a matter of state law from the continued threat of federal preemption, will continue.¹⁴

Oklahoma also is considering the Uniform Certificate of Title Act (UCOTA), as a carryover bill from the 2009 session. A number of amendments have been worked out with the Oklahoma Tax Commission.¹⁵ Passage of the bill will not only provide better coordination between Title 47 of the Oklahoma Statutes and UCC Articles 2, 2A and 9 (Article 2 does not even recognize certificate of title issues, so this

coordination is badly needed), but will provide a modern legal structure for certificate of title administration.

INTERNATIONAL ISSUES

International Projects Generally

Greater numbers of international conventions, dealing with subjects that traditionally have been matters of state law, are being concluded and, if ratified, may pre-empt areas of state law covered by or relating to uniform laws. To address these issues, the ULC has developed a close working relationship with the State Department's Office of the Assistant Legal Advisor for Private International Law, known as L/PIL. Two attorneys from L/PIL serve as advisory members of the ULC, and in addition attorneys from L/PIL routinely participate in the meetings of the ULC's International Legal Developments Committee, which advises the ULC Executive Committee on international issues, and in the meetings of the various ULC study and drafting committees working on specific projects. Advising is a two-way street and several members of the ULC serve on the State Department's Advisory Committee on Private International Law, providing L/PIL with advice on such issues as whether the U.S. should encourage the development of a convention in a particular area. As an important aspect of the relationship, in selecting members of its negotiating delegations L/PIL gives strong consideration to ULC members with expertise in the subject matter.

The ULC prefers that international conventions be implemented through state legislation, which can be accomplished through the use of such vehicles as conditional spending and conditional preemption.¹⁶ However, this approach is less appropriate when a convention has a relatively minor effect on state law. Thus, the decision on how to best implement a convention must be made on a case-by-case basis.

Joint Review Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit

As the name of this convention indicates, it does not apply to commercial letters of credit (although presumably it could be made applicable to such by agreement), but it does cover stand-by letters of credit (and independent guarantees which, as used in other countries, are much the same) and thus relates to UCC Article 5. The ULC and ALI, as sponsors of the

UCC, have formed a joint review committee (JRC) and the JRC has concluded that the convention should be ratified by the U.S. because it is consistent with Article 5 except in two respects, dealing with a different time limitation on so-called perpetual letters of credit and a question of setoff in connection with the issuer's performance which Article 5 leaves to other state law.

The JRC has recommended, and the ULC and ALI and the State Department have tentatively agreed, that it would be inefficient to attempt to amend UCC Article 5 in each jurisdiction by defining the transactions to which the convention applies and then applying to

Another important convention as to which the ULC and L/PIL have concluded that ratification is appropriate is the United Nations Convention on the Use of Electronic Communications in International Contracts.



those transactions the convention's rules on perpetual letters of credit and setoff. The current approach to this issue is for the convention to be implemented by federal legislation, drafted by the JRC, providing that: a covered undertaking (a letter of credit) that expressly states that it is governed by the convention is governed by the text of the convention; an undertaking that expressly states that it is governed by a foreign jurisdiction is governed by the law of that jurisdiction, including the convention as it is implemented there; an undertaking that expressly states that it is governed by the law of a U.S. state is governed by that state's law (*i.e.*, that state's version of Article 5) and not the convention; and an undertaking that does not choose the applicable law is governed by uniform Article 5 except as to the two minor differences noted above, in which cases it is governed by the rule of the convention.¹⁷ The references to Article 5 in the proposed federal law refer to the uniform text of Article 5 as approved by the ULC and ALI, not as enacted in any particular state. This will result in the enactment of the uniform text of Article 5 as federal law for these purposes, rather than pre-empting state law by the language of the convention or by implementing federal legislation whose language might differ from that of Article 5.

*United Nations Convention on the
Use of Electronic Communications in
International Contracts*

Another important convention as to which the ULC and L/PIL have concluded that ratification is appropriate is the United Nations Convention on the Use of Electronic Communications in International Contracts. This convention impacts the Uniform Electronic Transactions Act (UETA), which has been enacted in 49 jurisdictions and whose application to the UCC is largely limited to Articles 2 and 2A.¹⁸ The convention is for the most part consistent with the UETA, but the final decision on whether to seek implementation at the state or federal level has not yet been made.

Committee on the Hague Securities Convention

The ULC has appointed a committee to work with L/PIL to assist in the ratification and implementation of this convention, which deals with the choice of law issues that commonly arise in cross-border transactions involving securities held by a securities intermediary in the indirect holding system. This convention relates to UCC Articles 8 and 9.

Other International Efforts Relating to the UCC

Although outside a formal committee structure, ULC and ALI members have been involved in several other international initiatives that relate to the UCC. One is the Convention on Substantive Rules Regarding Intermediated Securities, which was approved by UNIDROIT in October 2009. This convention seeks to harmonize core aspects of interests that are transferred across borders between dissimilar securities markets and to define the basic rights and obligations of account holders, intermediaries and others in these circumstances, *e.g.*, with regard to matters such as: how credits are established; finality; reversibility; loss allocation in the event of a shortfall; and the effects of insolvency. Additional provisions cover practices such as lending and netting.

Another project involves the drafting of regulations to assist countries adopting the Model Inter-American Law on Secured Transactions (Model Law), which was promulgated by the Organization of American States (OAS) in 2002. The Model Law is based on the principles of Article 9 but, drawing from the law of Quebec, is drafted in a style oriented to a civil law jurisdiction. The Model Law contemplates that adopting countries will establish a registry similar to the Article 9 filing system, to serve a public notice function. The referenced project involves the development of regulations to implement such a registry. The resulting Model Regulations on Secured Finance Registry were adopted by the OAS in 2009.

ON-GOING ULC PROJECTS

Still other ULC efforts are less advanced or only in the planning stage, as noted below.

*Drafting Committee on Uniform Certificate of
Title for Vessels Act*

This committee is drafting a proposed uniform act, modeled on UCOTA, designed to establish a uniform certificate of title regime for vessels. A number of states (including Oklahoma) now issue certificates of title for boats, but (as with the current certificate of title laws covering vehicles) these laws are not uniform and often do not relate well to UCC Articles 2, 2A or 9, or to federal law. This drafting committee has made significant progress and there will be a reading of its draft at the ULC's 2010 Annual Meeting; there is no reason to believe that the project will not be completed in 2011.

*Drafting Committee on a
Manufactured-Housing Act*

At its 2010 Midyear Meeting, the ULC's Executive Committee authorized the formation of a drafting committee to work on an act dealing with the conversion of manufactured homes from personal property to real estate. Security interests in manufactured homes as personal property generally are governed by the applicable certificate of title law and UCC Article 9,¹⁹ but many states have statutes under which such a home can be "de-titled" (i.e., the certificate of title can be cancelled), e.g., if the home becomes real estate after it is placed on a permanent foundation.²⁰ These statutes operate in a variety of ways and the ULC, aided by an excellent report prepared by professor Ann Burkhardt of the University of Minnesota School of Law and a study undertaken by the ULC Joint Editorial Board for Uniform Real Property Acts, has determined that a uniform act will promote the interests of both lenders and homeowners. The drafting committee has not yet begun its work.

Study Committee on Payment Issues

This committee was created to: react to certain initiatives of Congress and the executive branch that may impact aspects of the payment Articles of the UCC; consider developments in electronic payments; explore whether developing and developed alternative payment methods outside the UCC (like debit and credit cards, stored value devices, and other payment means that are superseding checks and cash in many transactions) that are only partially covered by federal law or are governed mainly by private contracts might benefit from "back up" rules like those in UCC Article 4 for checks; and explore whether rules should be created that would smooth the transition from one payment method to another or deal with the rights and obligations of parties outside the coverage of federal law or private contracts and systems rules.

The committee has issued several detailed papers on issues of practical significance, based on comments from practicing lawyers and others, and continues to seek comments. However, given the focus by many interested constituencies on issues at the federal level relating to the current financial crisis,²¹ and considering the desirability of continued study and discussion of these developments, the committee does not

contemplate a more proactive role prior to at least the fall of 2010.

IMPACT OF PEB COMMENTARIES

In 2009 the PEB issued a commentary (PEB Commentary No. 16, July 1, 2009) on the case of *Winter Storm Shipping Ltd. v. TPI*.²² The court in *Winter Storm* and certain other cases had held that funds transfers in process under UCC Article 4A were subject to seizure under federal admiralty rules. This result was contrary to UCC Sections 4A-502 and 4A-503, and reflected a fundamental misunderstanding of how Article 4A works. Article 4A does not involve traceable funds of an originator being transferred to the beneficiary, but rather a series of payment orders whereby the account of the originator is debited to reimburse the originator's bank for its corresponding payment order to an intermediary bank that must be reimbursed by the originator's bank for, in turn, the payment order of the intermediary bank issued either to a subsequent intermediary bank or to the beneficiary's bank.²³ Based on the new PEB Commentary, *Winter Storm* and related cases were overruled in *Shipping Corp. of India v. Jaldhi Overseas Pte Ltd.*,²⁴ thus preserving the integrity of UCC Article 4A in that context.

However, two other cases may threaten that integrity in the domestic context, in effect upholding a claim as if it attached to the funds being transferred and rode with them through their journey. The PEB is thus working on a commentary to deal with those cases: *Pioneer Funding Corp. v. American Financial Mortgage Corp.*²⁵ and *Regions Bank v. The Provident Bank Inc.*²⁶

The PEB also is working on commentaries to address: 1) the conversion of electronic chattel paper to tangible chattel paper; and 2) the *Highland Capital* case,²⁷ which erroneously characterized a negotiable instrument as a type of security. The latter commentary, however, is currently on hold because the Article 9 JRC is drafting amendments to Article 8 that may resolve the issue. Finally, the PEB is working on a definitive official text of the UCC to remove technical errors and inconsistencies that have arisen as it has been amended from time to time, and is also considering one or more commentaries on the impact of international conventions on the UCC.

CONCLUSION

The Oklahoma commissioners to the ULC and the Oklahoma Bar Association Uniform Laws Committee and UCC Committee will

continue to support the progress and enactments of UCC updates in Oklahoma, and the development of Oklahoma comments for uniform laws,²⁸ in order to help keep the Oklahoma UCC current and relevant, including laws, both domestic and international, relating to though not a part of the UCC.²⁹

Authors' Note: This article is indebted to an article by William H. Henning, distinguished professor, University of Alabama School of Law, and Fred H. Miller, George L. Cross research professor emeritus, OU College of Law. The article appeared in the May 2010 issue of the UCC Bulletin published by Thomson Reuters and is reprinted with the permission of Thomson Reuters, ©2010 and with the permission of William H. Henning. For further information about this publication please visit www.west.thomson.com or call 800-328-9352. Professor Henning is a Commissioner from Alabama to the Uniform Law Commission (ULC) and its immediate past Executive Director. The views expressed here are those of your authors and not necessarily those of the ULC or any of its Members, and your authors are responsible for any errors.

1. The ULC is also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL). As noted further in this article, the Uniform Commercial Code is jointly sponsored by the ULC and the American Law Institute.

2. Revised Article 1 has been introduced in Massachusetts, Mississippi, Washington and Wisconsin; the 2002 amendments to Articles 3 and 4 have been introduced in Massachusetts and Mississippi; and Revised Article 7 has been introduced in Florida, Georgia, Massachusetts, Washington and Wisconsin. The repeal of Article 6 has been enacted in Wisconsin.

3. The ULC includes as "states" the District of Columbia, Puerto Rico and the U.S. Virgin Islands. See ULC Constitution §9.1. See also UCC § 1-201(b)(38). Citations in this article reference the current uniform text. Regarding Indian tribes, see *id.*, and *infra* note 29.

4. See *infra* this text at note 13.

5. See, e.g., Fred H. Miller & Alvin C. Harrell, *The Work of the Oklahoma Bar Uniform Laws Committee: Oklahoma Enacts UCC Article 3 and 4A Amendments*, 63 Consumer Fin. L.Q. Rep. 29 (2009).

6. Oklahoma has enacted all UCC Articles and updates (including repeal of Article 6), except for the 2003 and 2005 amendments to Articles 2 and 2A. As to Articles 2 and 2A, see *infra* this text at note 13. Regarding Oklahoma Indian tribes, see *infra* note 29. Current enactment information for all states is available on the ULC website at www.nccusl.org/Update/.

7. The ULC Commissioners from Oklahoma expect to do so.

8. The Oklahoma bill also will contain a number of conforming amendments to other UCC Articles necessary to coordinate with other UCC Articles and related legislation enacted in past years in Oklahoma.

9. UCC §9-503(a)(4)(A). The focus is on "registered organizations" (see definition at UCC §9-102(a)(70)), which comprise the majority of UCC filings, since individual debtors are most often involved in consumer goods transactions that are subject to alternative perfection methods, e.g., under UCC §§9-309 or 9-311(a).

10. See, e.g., *In re Kinderknecht*, 308 B.R. 71 (10th Cir. BAP 2004) ("Terry" was held to be insufficient as to a debtor named "Terrance"). Texas and Tennessee have amended UCC §9-503(a)(4)(A) as enacted in those states, to provide a safe harbor for a secured party that uses the name of the debtor as it appears on a driver's license or state-issued identification card. The safe-harbor concept is further explained in this text below.

11. Which involve issues reminiscent of the problems with "trade names" under old Article 9. See, e.g., William E. Carroll & Alvin C. Harrell, *Russian Roulette — UCC Style*, 52 Consumer Fin. L.Q. Rep. 338

(1998). The trade name issue was resolved in current §§9-503(a) and (c) and 9-506. *Id.*

12. For an earlier, more detailed description of issues being considered by the JRC, see Thomas J. Buiteweg, *UCC Article 9 Joint Review Committee: Issues in Motor Vehicle Finance*, 62 Consumer Fin. L.Q. Rep. 201 (2008). In Oklahoma, two current bills in the 2010 Legislature would adopt non-uniform amendments to UCC Article 9. One, S.B. 2105, would change the place to file to perfect a security interest against *all parties* in farm products to the Oklahoma Secretary of State's office (Oklahoma Article 9 currently provides for central filing in Oklahoma County, in addition to the filing requirements of the federal Food Security Act which require a filing in the Secretary of State's office).

The other bill, Engrossed S.B. 1615, indirectly amends the Oklahoma UCC by creating a lien for interest owners that will operate much like a purchase money security interest but will revise 52 Okla. Stat. §§548 *et seq.* As such, it will be based on real estate law and will create a lien in favor of interest owners of oil and gas in place that will carry over as to extracted oil and gas as against the first purchaser of the oil and gas, and purchasers from them unless the subsequent purchasers are buyers in ordinary course or take in good faith and for value, in which case the interest owner's lien attaches to the proceeds received by the first purchaser. As of this writing, full details remain to be negotiated. This proposal is a reaction to the holding in *In re Sem-crude*, 2009 WL1740750 (D.Del. June 19, 2009).

13. "Considered," in the sense that it was introduced. However, it was never heard in the House Judiciary Committee as lobbyists killed the bill by meeting privately with certain House members. This is a reminder that such legislative tactics are not limited to the U.S. Congress in connection with controversial issues such as health care reform.

14. This process also is occurring by another method. Many of the Article 2 amendments address ambiguities or splits in decisions and courts already are looking to the amendments for guidance. See, e.g., *Hitchiner Mfg. Co. Inc. v. Modern Industries Inc.*, 2009 WL 3643471, 70 U.C.C. Rep. Serv. 2d 270 (D.N.H. 2009) (discussing Official Comment 6 to UCC §2-207 of the amended uniform text).

15. S.B.1105. See generally Alvin C. Harrell & Fred H. Miller, *Update on UCOTA: A Title Office Perspective?*, 63 Consumer Fin. L.Q. Rep. 88 (2009).

16. As noted in the text below, the two methods by which this may be accomplished are "conditional spending," in which federal funding is withheld from states that do not enact designated legislation, and "conditional preemption," in which a convention is implemented by federal legislation that specifically states that state law controls in states that enact designated legislation but that otherwise inconsistent state law is preempted. The ULC has projects underway using each method. The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance will be implemented through amendments to the Uniform Interstate Family Support Act promulgated in 2008, and federal child-support funding will be withheld from states that do not adopt the amended act. The Senate Foreign Relations Committee recommended on January 22, 2010, that the full Senate give its advice and consent to this Convention. The ULC and L/PIL are working on state and federal legislation that would implement The Hague Convention on Choice of Court Agreements through conditional preemption. An explanation of the advantages of state implementation is beyond the scope of this article, but to mention just one advantage the rules of the convention may be more easily coordinated with other and related state law. See, e.g., Fred H. Miller, *International Legal Developments and Uniform State Laws: A Radical Proposal*, 60 Consumer Fin. L.Q. Rep. 402 (2006); Fred H. Miller, *The Uniform Law Process for the Development of Private State Law: A Model for Other Systems*, *id.* at 4; Fred H. Miller, *The Uniform Law Process and its Global Impact*, 56 Consumer Fin. L.Q. Rep. 136 (2002).

17. The latest draft of the implementing legislation, dated Oct. 8, 2009, may be found at www.law.upenn.edu/bll/archives/ulc/igasloc/2009oct8_clean.pdf.

18. See UETA §3(b)(2). The UETA has been enacted in Oklahoma. See 12A Okla. Stat. §§15-101 *et seq.* The convention also impacts the federal Electronic Signatures in Global and National Commerce Act, commonly referred to as E-SIGN, 15 U.S.C. §§7001-7003. Through the use of conditional preemption, E-SIGN's application is extremely limited in states that have adopted the UETA in the form promulgated by the ULC. See 15 U.S.C. §7002(a)(1).

19. See UCC §§9-109, 9-311.

20. These issues can have significant consequences. See, e.g., *In re Coleman*, 375 B.R. 907 (Bankr. W.D. Mo. 2007) (modification of lien in bankruptcy).

21. See, e.g., Donald C. Lampe, Fred H. Miller & Alvin C. Harrell, *Introduction to the 2009 Annual Survey of Consumer Financial Services Law*, 64 Bus. Law. 465 (2009).

22. 310 F.3d 263 (2nd Cir. 2002), *cert. denied*, 539 U.S. 927 (2003).

23. See, e.g., UCC Article 4A, Prefatory Note; Alvin C. Harrell, *Payment System Issues — UCC Article 4A; Regulations J, S, and D*, 50 Consumer Fin. L.Q. Rep. 49 (1996).

24. 585 F.3d 58 (2d Cir. 2009) *cert. denied*, order list 559 U.S. No. 09-849 (Mar. 22, 2010). The impact on other cases was immediate. In *Hawkland, Ltd. v. Overseas Shipping Agencies*, 590 F.3d 87, 2009 A.M.C. 2705 (2d Cir. 2009), the Second Circuit held that *Shipping Corp. of India* applied retroactively, and in *Global Maritime Investments v. Companhia Siderurgica Nacional*, 70 U.C.C. Rep. Serv. 2d 640, 2009 WL 4730196 (S.D.N.Y. 2009), the District Court vacated *ex parte* orders for attachment and garnishment and ordered the return of funds based on the *Shipping Corp. of India* decision. A similar case is *Nova Maritime B.V.I. Ltd. v. Transvast Shipping Co. Ltd.*, 70 U.C.C. Rep. Serv. 2d 591, 2009 WL 4884162 (S.D.N.Y. 2009).

25. 855 A.2d 818 (Pa. 2004), *reargument denied*, 864 A.2d 1198 (Pa. 2004), *cert. den.*, 544 U.S. 978 (2005).

26. 345 F.3d 1267 (11th Cir. 2003).

27. *Highland Capital Mgt. v. Schneider*, 866 N.E. 2d 1020 (N.Y. 2007).

28. See, e.g., Miller & Harrell, *supra* note 5.

29. To illustrate, the latter, the Oklahoma Commissioners are working with real property interests in the Oklahoma Bar Association to adapt the Uniform Real Property Transfer on Death Act to not only fill gaps in the present Oklahoma legislation on this subject but to improve that legislation. While the UCC does not generally deal with real estate, the concepts in this act are similar to ones involving personal property transferred the same way, such as Transfer on Death (TOD) security registration. A committee of the ULC also is working on legislation for adoption by Indian tribes and nations that will reduce the fractionalization of Indian lands and make interests in such real property more adaptable to being used as collateral, in much the same way as UCC Article 9 does for personal property.

In that latter context, the ULC also produced a Model Tribal Secured Transactions Act to provide a workable version of UCC Article 9 for tribes that wish to enact it, and this model act increasingly is being embraced by tribal councils. See, e.g., Bruce A. King, *The Model Tribal Secured Transactions Act and Tribal Economic Development*, 61 Consumer Fin. L.Q. Rep. 804 (2007).

ABOUT THE AUTHORS



Alvin C. Harrell is a professor of law at OCU School of Law and president of Home Savings and Loan Association of Oklahoma City. He is co-author of a dozen books, including "The Law of Modern Payment Systems and Notes" (with Professor Fred H. Miller). He is editor of the *Annual Survey of Consumer*

Financial Services Law in *The Business Lawyer*. He chaired the ABA UCC Committee Task Force on State Certificate of Title Laws.



Fred H. Miller is a George L. Cross research professor emeritus at the OU College of Law and of counsel to Phillips Murrah. He is a member of the American Law Institute and serves on the Permanent Editorial Board for the Uniform Commercial Code. He is an Oklahoma commissioner to the

National Conference of Commissioners on Uniform State Laws and formerly was its executive director, Executive Committee chair and past president.



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