The Uniform Commercial Code Survey: Introduction

Robyn L Meadows
Russell A. Hakes
Stephn 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.¹ State legislatures continue to reject the conflict of laws rule in the “uniform” version of U.C.C. section 1-301(c)² and to differ on enacting the unitary good faith standard in revised section 1-201(b)(20).³ Revised Article 7 adoptions continue with 28 states

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).


1555
now on board with the 2003 revision. 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. As has been the case since their promulgation, the 2003 revisions to Article 2 and 2A show no sign of enactment in any state. The question may soon become are further 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.

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. 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. The Secured Transactions survey reviews and analyzes the much discussed NetBank, FSB v. Kipperman (In re Commercial Money Center, Inc.) decision, wherein the Ninth Circuit Bankruptcy Appellate panel found that the right to

---


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 (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).


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.\textsuperscript{11}

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).\textsuperscript{12} This unexpected decision and the possible ramifications of it are discussed and critiqued in the Article 8 survey.\textsuperscript{13}

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 4As prohibition against such attachment.\textsuperscript{14}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{11} Weise, supra note 8, at 1642.
\item \textsuperscript{12} Highland Capital Management LP v. Schneider, 866 N.E.2d 1020 (N.Y. 2007).
\item \textsuperscript{13} See Howard Darmstadter, Article 8—Investment Securities, 62 Bus. Law 1623, 1623 (2007).
\end{itemize}
\end{footnotesize}