# REPORT OF THE PERMANENT EDITORIAL BOARD

FOR THE

# UNIFORM COMMERCIAL CODE

# OFFICIAL TEXT OF THE UNIFORM COMMERCIAL CODE

DECEMBER 11, 2024

# PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE




**The American Law Institute**
4025 Chestnut St.
Philadelphia, PA 19104
(215) 243-1600
www.ali.org

**Uniform Law Commission**
111 N. Wabash Ave., Ste. 1010
Chicago, IL 60602
(312) 450-6600
www.uniformlaws.org

# OFFICIAL TEXT OF THE UNIFORM COMMERCIAL CODE

## INTRODUCTION

The Uniform Commercial Code has been updated many times in recent decades, but the series of revisions affected individual Articles of the UCC at different times. As the revisions occurred, a unified version of the text of the full UCC was not kept up to date. More than a decade ago, the Permanent Editorial Board launched an effort to compile a version of the Official Text of the entire UCC that accurately takes into account all past revisions. Among the many reasons for doing so was the realization that some amendments to the Official Comments, whether in connection with revisions to the statutory text or the issuance of PEB Commentaries, had not fully reflected changes to the text that were made at other times. It also became apparent that numerous cross-references were out of date and that non-substantive errors in spelling, grammar, and citation form needed to be corrected.

To address these problems and enable the compilation of an Official Text that is internally consistent and historically accurate, this Report sets forth changes to the Official Comments to Articles 1, 2, 2A, 3, 4, 4A, 5, 6, 7, 8, and 9. Only the changes are shown, not the entire compiled Official Text.

Henceforth, the formatting of the Official Text is also being made consistent across Articles, although such changes are not expressly noted in this Report. For example, Section captions will all use the word "Section" rather than a section symbol; will use initial capital letters, except for prepositions and conjunctions; and will contain no period at the end. One formatting change that this Report does depict is the removal of the occasional references to when a comment was amended (*e.g.*, "amended 1999"). Such references appeared haphazardly, did not identify the source of the change, and did not indicate what was changed. In their place, a notation has been added to the title page of each Article indicating the history of changes to the Article. References in the Official Comments to a specific PEB Commentary were retained.

# UNIFORM COMMERCIAL CODE

# ARTICLE 1 – GENERAL PROVISIONS

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

*WITH COMMENTS*

As adopted in 2001 and revised in: (i) 2002, in connection with revisions to the Official Comments to Article 9; (ii) 2003, in connection with the revision of Article 7; (iii) 2005, in connection with PEB amendments and corrections to the Official Comments; (iv) 2008, in connection with revision of § 1-301; (v) 2021, in connection with PEB Commentary No. 23; (vi) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code; (vii) 2022, in connection with PEB Commentaries Nos. 25 and 27; and (viii) 2025 in connection with PEB Commentary No. 32.

**UNIFORM COMMERCIAL CODE**

**ARTICLE 1 – GENERAL PROVISIONS**

**PART 1**
**GENERAL PROVISIONS**

**Section 1-101. Short Titles**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ Each other article of the Uniform Commercial Code may also be cited by its own short title. See Sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, 9-101, 12-101 and A-101.

**Section 1-102. Scope of Article**

* * *

**~~Preliminary Comments~~Official Comment**

* * *

~~1.~~ This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always been the case – the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See also Comment 1 to Section 1-301.

**Section 1-103. Construction Of [Uniform Commercial Code] to Promote Its Purposes and Policies; Applicability of Supplemental Principles of Law**

* * *

**Official ~~Comments~~Comment**

**Source:** Former Section ~~1-102 (1) (2)~~ 1-102(1), (2); Former Section 1-103.

* * *

Even prior to the enactment of the Uniform Commercial Code, courts were careful to

keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.*, ~~158 Or. 1,~~ 73 P.2d 1391 (Or. 1937), and compare Section 1-104. The courts have often recognized that the policies embodied in an act are applicable in reason to subject-matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.*, 239 U.S. 520~~, 36 S. Ct. 194, 60 L. Ed. 417~~ (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the ~~subject matter~~ subject matter had been intentionally excluded from the act in general. *Agar v. Orda*, ~~264 N.Y. 248,~~ 190 N.E. 479 (N.Y. 1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that Act was intentionally limited to goods "other than things in action."). They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.*, ~~156 Minn. 201,~~ 194 N.W. 399 (Minn. 1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission allowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

* * *

**Section 1-104. Construction Against Implied Repeal**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention should not lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

**Section 1-105. Severability**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

**Section 1-106. Use of Singular and Plural; Gender**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ This section makes it clear that the use of singular or plural in the text of the Uniform Commercial Code is generally only a matter of drafting style – singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. *See*, *e.g.*, Section 9-322.

**Section 1-107. Section Captions**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with respect to subsection headings appearing in Articles 9, 12, and A (Transitional Provisions). See Section 9-101, Comment 3 ("subsection headings are not a part of the official text itself and have not been approved by the sponsors."); Section 12-101, Comment; Section A-101, Comment.

**Section 1-108. Relation to Electronic Signatures in Global and National Commerce Act**

* * *

**Official ~~Comments~~Comment**

* * *

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq* became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of ~~section~~ Section 101 of that Act with respect to state law if such statute, *inter alia*, specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating

electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

* * *

## PART 2

## GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

### Section 1-201. General Definitions

* * *

**Official ~~Comments~~Comment**

* * *

**Changes from former law:** In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in Article 1, as stated in former Section 1-201, but also those appearing in other Articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the "context" is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, Sections 3-103(a)~~(9)~~(12) (defining "promise," in relevant part, as "a written undertaking to pay money signed by the person undertaking to pay") and 3-303(a)(1) (indicating that an instrument is issued or transferred for value if "the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed"). It is clear from the statutory context of the use of the word "promise" in Section 3-303(a)(1) that the term was not used in the sense of its definition in Section 3-103(a)~~(9)~~(12). Thus, the Section 3-103(a)~~(9)~~(12) definition should not be used to give meaning to the word "promise" in Section 3-303(a).

* * *

Two definitions in former Section 1-201 have been deleted. The definition of "honor" in former Section 1-201(21) has been ~~moved to Section 2- 103(1)(b), inasmuch as the definition only applies to the use of the word in Article 2.~~ deleted but a definition of that term applicable to Article 5 remains in Section 5-102(a)(8). The definition of "telegram" in former Section 1-201(41) has been deleted because that word no longer appears in the definition of "conspicuous."

* * *

4. “Bank.” Derived from Section ~~4A-104~~4A-105.

* * *

16. “Document of title.” Derived from former Section 1-201, which was derived from Section 76, Uniform Sales Act. This definition makes explicit that the obligation or designation of a third party as “bailee” is essential to a document of title and clearly rejects any such result as obtained in *Hixson v. Ward*, 254 ~~Ill.App.~~Ill. App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included, including documents which gain commercial recognition in the international arena. See UNCITRAL Draft Instrument on the Carriage of Goods ~~By~~ by Sea. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

* * *

**Section 1-202. Notice; Knowledge**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-203. Lease Distinguished from Security Interest**

* * *

**Official ~~Comments~~Comment**

* * *

**Changes from former law:** This section is substantively identical to those portions of former Section 1-201(37) that distinguished “true” leases from security interests, except that the definition of “present value” formerly embedded in Section 1-201(37) has been placed in Section ~~1-201(28)~~1-201(b)(28).

1. An interest in personal property or fixtures which secures payment or performance of an obligation is a “security interest.” See Section ~~1-201(37)~~1-201(b)(35). Security interests are sometimes created by transactions in the form of leases. Because it can be difficult to distinguish leases that create security interests from those that do not, this section provides rules that govern the determination of whether a transaction in the form of a lease creates a security interest.

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: what is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in ~~the 1978 Official Text of the Act,~~ former Section 1-201(37), which prevailed until Article 2A was promulgated. The confusion was compounded by the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee's interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to the lessor. This has significant implications to the lessee's creditors. "On common law theory, the lessor, since he has not parted with title, is entitled to full protection against the lessee's creditors and trustee in bankruptcy . . . ." 1 G. Gilmore, *Security Interests in Personal Property* Section 3.6, at 76 (1965).

Under pre-UCC chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured Transactions (Article 9) did not change the common law in that respect. Coogan, *Leasing and the Uniform Commercial Code*, in EQUIPMENT LEASING – LEVERAGED LEASING 681, 700 n.25, 729 n.80 (2d ed. 1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest previously in Section 1-201(37) ~~of the 1978 Official Text of the Act~~ provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, *i.e.*, leases intended as security; however, the definition became vague and outmoded.

* * *

Prior to enactment of the rules now codified in this section, ~~the 1978 Official Text of~~ Section 1-201(37) provided that whether a lease was intended as security (*i.e.*, a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

* * *

Subsections (a) and (b) were originally taken from Section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. Grant Gilmore, *Security Law, Formalism and Article 9*, 47 ~~Neb.L.Rev.~~ Neb. L. Rev. 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus

correcting early statutory gloss, *e.g.*, *In re Royer's Bakery, Inc.*, 1 U.C.C. Rep. Serv. (Callaghan) 342 (~~Bankr.E.D.Pa.~~Bankr. E.D. Pa. 1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 ~~Bankr.~~B.R. 647, 651-52 (~~Bankr.W.D.Wis.~~Bankr. W.D. Wis. 1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this section. *In re Celeryvale Transp.*, 44 ~~Bankr.~~B.R. 1007, 1014-15 (~~Bankr.E.D.Tenn.1984~~Bankr. E.D. Tenn. 1984). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 ~~Bankr.~~B.R. 370, 371-73 (~~Bankr.W.D.Wis.1983~~Bankr. W.D. Wis. 1983).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not *per se* create a security interest. *Rushton v. Shea*, 419 ~~F.Supp.~~ F. Supp. 1349, 1365 (~~D.Del.1976~~D. Del. 1976). Subparagraphs (2) and (3) provide the same regarding the provisions of the typical net lease. *Compare All-States Leasing Co. v. Ochs*, ~~42 Or.App. 319,~~ 600 P.2d 899 (~~Ct.App.1979~~Or. Ct. App. 1979), *with In re Tillery*, 571 F.2d 1361 (~~5th Cir.1978~~5th Cir. 1978). Subparagraph (4) restates and expands the provisions of ~~the 1978 Official Text of~~ former Section 1-201(37) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. *Compare Arnold Mach. Co. v. Balls*, 624 P.2d 678 (Utah 1981), *with Aoki v. Shepherd Mach. Co.*, 665 F.2d 941 (~~9th Cir.1982~~9th Cir. 1982).

* * *

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 F.2d 1139 (~~7th Cir.1982~~7th Cir. 1982). This was not done because it would unnecessarily complicate the definition. Further development of this rule is left to the courts.

* * *

**Section 1-204. Value**

* * *

**Official ~~Comments~~Comment**

* * *

This definition is not applicable to Articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. See Sections ~~4-208, 4-209~~4-211, 4-214, 3-303. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved. Article 12 adopts the substance of the Article 3 definition. See Section 12-102(a)(4).

**Section 1-205. Reasonable Time; Seasonableness**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-206. Presumptions**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~Several sections of the Uniform Commercial Code state that there is a "presumption" as to a certain fact, or that the fact is "presumed." This section, derived from the definition appearing in former Section 1-201(31), indicates the effect of those provisions on the proof process.

## PART 3

## TERRITORIAL APPLICABILITY AND GENERAL RULES

**Section 1-301. Territorial Applicability; Parties' Power to Choose Applicable Law**

* * *

**Official Comment**

* * *

1. Subsection (a) states affirmatively the right of the parties to a multi-state transaction or a transaction involving foreign trade to choose their own law. That right is subject to the firm rules

stated in the sections listed in subsection (c), and is limited to jurisdictions to which the transaction bears a "reasonable relation." In general, the test of "reasonable relation" is similar to that laid down by the Supreme Court in Seeman v. Philadelphia Warehouse Co., 274 U.S. 403~~, 47 S.Ct. 626, 71 L.Ed. 1123~~ (1927). Ordinarily the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs. But an agreement as to choice of law may sometimes take effect as a shorthand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.

* * *

**Section 1-302. Variation by Agreement**

* * *

**Official ~~Comments~~Comment**

* * *

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: "the effect" of its provisions may be varied by "agreement." The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in pre-Code cases such as *Manhattan Co. v. Morgan*, ~~242 N.Y. 38,~~ 150 N.E. 594 (N.Y. 1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104; nor can they change the meaning of such terms as "bona fide purchaser," "holder in due course," or "due negotiation," as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. "Agreement" here includes the effect given to course of dealing, usage of trade and course of performance by Sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under Section 1-103. The rights of third parties under Section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.
* * *

2. An agreement that varies the effect of provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UNCITRAL or ~~Unidroit~~UNIDROIT (*see*, *e.g.*, ~~Unidroit~~ UNIDROIT Principles of International Commercial Contracts), or non-legal codes such as trade codes.

* * *

**Section 1-303. Course of Performance, Course of Dealing, and Usage of Trade**

* * *

**Official ~~Comments~~Comment**

* * *

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (Sections 1-304, 2-302, 2A-108) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be "reasonable." However, the emphasis is shifted. The very fact of commercial acceptance makes out a *prima facie* case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

* * *

**Section 1-304. Obligation of Good Faith**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-305. Remedies To Be Liberally Administered**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-306. Waiver or Renunciation of Claim or Right after Breach**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-307. Prima Facie Evidence by Third-Party Documents**

* * *

**Official ~~Comments~~Comment**

* * *

**Section 1-308. Performance or Acceptance under Reservation of Rights**

* * *

**Official ~~Comments~~Comment**

**Source:** Former Section 1-207.

**Changes from former law:** This section is identical to former Section 1-207.

* * *

**Section 1-309. Option to Accelerate at Will**

* * *

**Official ~~Comments~~Comment**

* * *

~~1.~~ The common use of acceleration clauses in many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

* * *

**Section 1-310. Subordinated Obligations**

* * *

**Official ~~Comments~~Comment**

* * *

3. The enforcement of subordination agreements is largely left to supplementary

principles under Section 1-103. If the subordinated debt is evidenced by a certificated security, Section 8-202(a) authorizes enforcement against purchasers on terms stated or referred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under Sections 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Sections ~~3-302(3)(a), 3-306, and 8-317~~ 3-302(c)(i), 3-305(a)(2), and 8-112(a) severely limit the rights of levying creditors of a subordinated creditor in such cases.

~~**Appendix I**~~
~~**[OMITTED]**~~

# UNIFORM COMMERCIAL CODE

# ARTICLE 2 – SALES

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**
**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1962 and revised in: (i) 1966, in connection with a PEB Report; (ii) 1972, in connection with the revision of Article 9; (iii) 1989, in connection with the revision of Article 6; (iv) 1990, in connection with PEB Commentary No. 1; (v) 1994, to correct errata; (vi) 1995, in connection with the revision of Article 5; (vii) 1999, in connection with the revision of Article 9; (viii) 2001, in connection with the revision of Article 1; (ix) 2002, in connection with amendments to Article 9; (x) 2003, in connection with the revision of Article 7; (xi) 2004 and 2005, in connection with technical amendments; and (xii) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

# UNIFORM COMMERCIAL CODE

## ARTICLE 2 – SALES

## PART 1

## SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

### Section 2-101. Short Title

* * *

### Official Comment

* * *

### Section 2-102. Scope; Certain Security and Other Transactions Excluded from This Article

* * *

### Official Comment

* * *

As Example 9 illustrates, parties may agree that Article 2 will not govern non-goods aspects of a hybrid transaction, even though the sale-of-goods aspects predominate. But, when sale-of-goods aspects predominate, the parties cannot agree that Article 2 does not govern matters that relate to the transaction as a whole, such as contract formation and enforceability. For example, in a situation such as Example 9, if the requirements of the Section 2-201 statute of frauds are not satisfied, it would make little sense to hold that the services aspects of the transaction are enforceable when the provision of services is clearly dependent on the existence of the sale-of-goods aspects. Of course, even when this ~~article~~ Article applies, its provisions may be varied by agreement to the extent provided in section 1-302.

* * *

**Definitional Cross References:**

"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Present sale". Section 2-106.
"Sale". Section 2-106.

### Section 2-103. Definitions and Index of Definitions

* * *

**Official Comment**

* * *

**Section 2-104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. The term "merchant" as defined here roots in the "law merchant" concept of a professional in business. The professional status under the definition may be based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized knowledge as to both and which kind of specialized knowledge may be sufficient to establish the merchant status is indicated by the nature of the provisions.

The special provisions as to merchants appear only in this Article and they are of three kinds. Sections 2-201(2), 2-205, 2-207 and 2-209 dealing with the statute of frauds, firm offers, confirmatory memoranda and modification rest on normal business practices which are or ought to be typical of and familiar to any person in business. For purposes of these sections almost every person in business would, therefore, be deemed to be a "merchant" under the language "who . . . by his occupation holds himself out as having knowledge or skill peculiar to the practices . . . involved in the transaction . . ." since the practices involved in the transaction are non-specialized business practices such as answering mail. In this type of provision, banks or even universities, for example, well may be "merchants." But even these sections only apply to a merchant in his mercantile capacity; a lawyer or bank president buying fishing tackle for his own use is not a merchant.

* * *

A third group of sections ~~includes 2-103(1)(b), which provides that in the case of a merchant "good faith"~~ includes ~~observance of reasonable commercial standards of fair dealing in the trade;~~ 2-327(1)(c), 2-603 and 2-605, dealing with responsibilities of merchant buyers to follow seller's instructions, etc.; 2-509 on risk of loss, and 2-609 on adequate assurance of performance. This group of sections applies to persons who are merchants under either the "practices" or the "goods" aspect of the definition of merchant.
* * *

**Cross References:**

Point 1: See Sections 1-102 and ~~1-203~~1-304.

Point 2: See Sections 2-314, 2-315, ~~and~~ 2-320 to 2-325~~, of this Article,~~ and Article 9.

* * *

**Section 2-105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"**

* * *

**Official Comment**

* * *

**Purposes of Changes and New Matter:**

1. Subsection (1) on "goods": The phraseology of the prior uniform statutory provision has been changed so that:

* * *

"Investment securities" are expressly excluded from the coverage of this Article. It is not intended by this exclusion, however, to prevent the application of a particular section of this Article by analogy to securities (as was done with the Original Sales Act in *Agar v. Orda*, ~~264 N.Y. 248,~~ 190 N.E. 479~~, 99 A.L.R. 269~~ (N.Y. 1934)) when the reason of that section makes such application sensible and the situation involved is not covered by the Article of this Act dealing specifically with such securities (Article 8)

* * *

**Section 2-106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"**

* * *

**Official Comment**

* * *

**Cross References:**

Point 2: Sections ~~1-203, 1-205, 2-208~~ 1-303, 1-304 and 2-508.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.

"Remedy". Section 1-201.
"Goods". Section 2-105.
"~~Rights~~Right". Section 1-201.
"Party". Section 1-201.
"Seller". Section 2-103.

**Section 2-107. Goods to Be Severed from Realty: Recording**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Party". Section 1-201.
"Present sale". Section 2-106.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.

**PART 2**

**FORM, FORMATION AND READJUSTMENT OF CONTRACT**

**Section 2-201. Formal Requirements; Statute of Frauds.**

* * *

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (~~See.~~Section 2-606).

**Official Comment**

* * *

**Changes:** Completely re-phrased; restricted to sale of goods. See also Sections ~~1-206, 8-319~~ 2A-201, 5-104, and 9-203.

* * *

**Definitional Cross References:**

"Action". Section 1-201.

"Between merchants". Section 2-104.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Notice". Section ~~1-201~~1-202.
"Party". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"Sale". Section 2-106.
"Seller". Section 2-103.

**Section 2-202. Final Written Expression: Parol or Extrinsic Evidence**

* * *

**Official Comment**

* * *

**Section 2-203. Seals Inoperative**

* * *

**Official Comment**

* * *

**Section 2-204. Formation in General**

* * *

**Official Comment**

* * *

**Section 2-205. Firm Offers.**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Section ~~1-102~~1-103.
Point 2: Section ~~1-102~~1-103.
Point 3: Section 2-201.
Point 5: Section 2-302.

**Definitional Cross References:**

"Goods". Section 2-105.
"Merchant". Section 2-104.
"Record". Section 1-201
"Signed". Section 1-201.
~~"Writing". Section 1-201.~~

**Section 2-206. Offer and Acceptance in Formation of Contract**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conforming". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.

**Section 2-207. Additional Terms in Acceptance or Confirmation**

* * *

**Official Comment**

* * *

**Cross References:**

See generally Section 2-302.
Point 5: Sections 2-513, 2-602, 2-607, 2-609, 2-612, 2-614, 2-615, 2-616, 2-718 and 2-719.
Point 6: Sections ~~1-102~~1-103 and 2-104.

**Definitional Cross References:**

"Between merchants". Section 2-104.
"Contract". Section 1-201.
"Notification". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Seasonably". Section ~~1-204~~1-205.
"Send". Section 1-201.
"Term". Section 1-201.
"Written". Section 1-201.

**Section 2-208. [DELETED]**

**Section 2-209. Modification, Rescission and Waiver**

* * *

**Official Comment**

* * *

**Purposes of Changes and New Matter:**

* * *

2. Subsection (1) provides that an agreement modifying a sales contract needs no consideration to be binding.

* * *

The test of "good faith" ~~between merchants or as against merchants~~ includes "observance of reasonable commercial standards of fair dealing ~~in the trade~~" (Section 1-201(b)(20)~~2-103~~), and may in some situations require an objectively demonstrable reason for seeking a modification. But such matters as a market shift which makes performance come to involve a loss may provide such a reason even though there is no such unforeseen difficulty as would make out a legal excuse from performance under Sections 2-615 and 2-616.

3. Subsections (2) and (3) are intended to protect against false allegations of oral modifications. "Modification or rescission" includes abandonment or other change by mutual consent, contrary to the decision in *Green v. Doniger*, ~~300 N.Y. 238,~~ 90 N.E.2d 56 (N.Y. 1949); it does not include unilateral "termination" or "cancellation" as defined in Section 2-106.

* * *

**Cross References:**

Point 1: Section ~~1-203~~1-304.
Point 2: Sections 1-201, ~~1-203~~1-304, 2-615 and 2-616.
Point 3: Sections 2-106, 2-201 and 2-202.
Point 4: Section~~s~~ 2-202 ~~and 2-208~~.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Between merchants". Section 2-104.
"Contract". Section 1-201.
"Notification". Section ~~1-201~~1-202.
"Signed". Section 1-201.
"Term". Section 1-201.

"Writing". Section 1-201.

**Section 2-210. Delegation of Performance; Assignment of Rights**

* * *

**Official Comment**

* * *

**Cross References:**

Point 3: Articles 5 and 9.
Point 4: Sections 2-306 and 2-609.
Point 5: Article 9, Sections 9-402, 9-404, ~~9-404~~9-405~~,~~ and 9-406.
Point 7: Article 9.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Party". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.
"Term". Section 1-201.

**PART 3**

**GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT**

**Section 2-301. General Obligations of Parties**

* * *

**Official Comment**

* * *

**Cross References:**

Section ~~1-106~~1-305. See also Sections ~~1-205~~1-303, ~~2-208,~~ 2-209, 2-508 and 2-612.

* * *

**Section 2-302. Unconscionable Contract or Clause**

* * *

**Official Comment**

* * *

**Purposes:**

1. This section is intended to make it possible for the courts to police explicitly against the contracts or clauses which they find to be unconscionable. In the past such policing has been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary, to public policy or to the dominant purpose of the contract. This section is intended to allow the court to pass directly on the unconscionability of the contract or particular clause therein and to make a conclusion of law as to its unconscionability. The basic test is ~~is~~ whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract. Subsection (2) makes it clear that it is proper for the court to hear evidence upon these questions. The principle is one of the prevention of oppression and unfair surprise (*Cf. Campbell Soup Co. v. Wentz*, 172 F.2d 80~~,~~ (3d Cir. 1948)) and not of disturbance of allocation of risks because of superior bargaining power. The underlying basis of this section is illustrated by the results in cases such as the following:

*Kansas City Wholesale Grocery Co. v. Weber Packing Corp.* ~~*oration*~~, ~~93 Utah 414,~~ 73 P.2d 1272 (Utah 1937), where a clause limiting time for complaints was held inapplicable to latent defects in a shipment of catsup which could be discovered only by microscopic analysis; *Hardy v. General Motors Acceptance Corp.* ~~*oration*~~, ~~38 Ga.App. 463,~~ 144 S.E. 327 (Ga. Ct. App. 1928), holding that a disclaimer of warranty clause applied only to express warranties, thus letting in a fair implied warranty; *Andrews Bros, v. Singer & Co*. (1934 CA) 1 K.B. 17, holding that where a car with substantial mileage was delivered instead of a "new" car, a disclaimer of warranties, including those "implied," left unaffected an "express obligation" on the description, even though the Sale of Goods Act called such an implied warranty; *New Prague Flouring Mill Co. v. G. A. Spears*, ~~194 Iowa 417,~~ 189 N.W. 815 (Iowa 1922), holding that a clause permitting the seller, upon the buyer's failure to supply shipping instructions, to cancel, ship, or allow delivery date to be indefinitely postponed 30 days at a time by the inaction, does not indefinitely postpone the date of measuring damages for the buyer's breach, to the seller's advantage; and *Kansas Flour Mills Co. v. Dirks*, ~~100 Kan. 376,~~ 164 P. 273 (Kan. 1917), where under a similar clause in a rising market the court permitted the buyer to measure his damages for non-delivery at the end of only one 30 day postponement; *Green v. Arcos, Ltd*. (1931 CA) 47 T.L.R. 336, where a blanket clause prohibiting rejection of shipments by the buyer was restricted to apply to shipments where discrepancies represented merely mercantile variations; *Meyer v. Packard Cleveland Motor Co.*, ~~106 Ohio St. 328,~~ 140 N.E. 118 (Ohio 1922), in which the court held that a "waiver" of all agreements not specified did not preclude implied warranty of fitness of a rebuilt dump truck for ordinary use as a dump truck; *Austin Co. v. J. H. Tillman Co.*, ~~104 Or. 541,~~ 209 P. 131 (Or. 1922), where a clause limiting the buyer's remedy to return was held to be applicable only if the seller had delivered a machine needed for a construction job which reasonably met the contract description; *Bekkevold v. Potts*, ~~173 Minn. 87,~~ 216 N.W. 790~~, 59 A.L.R. 1164~~ (Minn. 1927), refusing to allow warranty of fitness for purpose imposed by law to be negated by clause excluding all warranties "made" by the seller; *Robert A. Munroe & Co. v. Meyer* (1930) 2 K.B. 312, holding that the warranty of description overrides a clause reading "with all faults and defects" where adulterated meat not up to the contract description was delivered.

* * *

**Section 2-303. Allocation or Division of Risks**

* * *

**Official Comment**

* * *

**Purposes:**

1. This section is intended to make it clear that the parties may modify or allocate "unless otherwise agreed" risks or burdens imposed by this Article as they desire, always subject, of course, to the provisions on unconscionability.

Compare Section ~~1-102(4)~~1-302.

* * *

**Cross References:**

Point 1: Sections ~~1-102,~~1-302 and 2-302.
Point 2: Section 1-201.

* * *

**Section 2-304. Price Payable in Money, Goods, Realty, or Otherwise**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Section ~~1-102~~1-103.
Point ~~8~~3: Sections ~~1-102,~~ 1-103, 1-104 and 2-107.

* * *

**Section 2-305. Open Price Term**

* * *

**Official Comment**

**Prior Uniform Statutory Provision:** Sections 9 and 10, Uniform Sales Act.

**Changes:** Completely rewritten.

**Purposes of Changes:**

* * *

3. Subsection (2), dealing with the situation where the price is to be fixed by one party rejects the uncommercial idea that an agreement that the seller may fix the price means that he may fix any price he may wish by the express qualification that the price so fixed must be fixed in good faith. Good faith includes observance of reasonable commercial standards of fair dealing ~~in the trade if the party is a merchant~~. (Section ~~2-103~~1-201(b)(20)). But in the normal case a "posted price" or a future seller's or buyer's "given price," "price in effect," "market price," or the like satisfies the good faith requirement.

* * *

6. Throughout the entire section, the purpose is to give effect to the agreement which has been made. That effect, however, is always conditioned by the requirement of good faith action which is made an inherent part of all contracts within this Act. (Section ~~1-203~~1-304).

**Cross References:**

Point 1: Sections 2-204(3), 2-706, 2-712 and 2-716.
Point 3: Section 2-103.
Point 5: Sections 2-311 and-2-610.
Point 6: Section ~~1-203~~1-304.

* * *

**Section 2-306. Output, Requirements and Exclusive Dealings**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. Under this Article, a contract for output or requirements is not too indefinite since it is held to mean the actual good faith output or requirements of the particular party. Nor does such a contract lack mutuality of obligation since, under this section, the party who will determine quantity is required to operate his plant or conduct his business in good faith and according to commercial standards of fair dealing in the trade so that his output or requirements will approximate a reasonably foreseeable figure. Reasonable elasticity in the requirements is expressly envisaged by this section and good faith variations from prior requirements are permitted even when the variation may be such as to result in discontinuance. A shutdown by a

requirements buyer for lack of orders might be permissible when a shut-down merely to curtail losses would not. The essential test is whether the party is acting in good faith. Similarly, a sudden expansion of the plant by which requirements are to be measured would not be included within the scope of the contract as made but normal expansion undertaken in good faith would be within the scope of this section. One of the factors in an expansion situation would be whether the market price had risen greatly in a case in which the requirements contract contained a fixed price. Reasonable variation of an extreme sort is exemplified in *Southwest Natural Gas Co. v. Oklahoma Portland Cement Co.*, 102 F.2d 630 (~~CCA.~~ 10th Cir.~~,~~ 1939). This Article takes no position as to whether a requirements contract is a provable claim in bankruptcy.

* * *

**Cross References:**

Point 4: Section 2-210.
Point 5: Sections ~~1-203~~1-304 and 2-609.

* * *

**Section 2-307. Delivery in Single Lot or Several Lots**

* * *

**Official Comment**

* * *

**Purposes of Changes:**

* * *

3. The "but" clause of this section goes to the case in which it is not commercially feasible to deliver or to receive the goods in a single lot as for example, where a contract calls for the shipment of ten carloads of coal and only three cars are available at a given time. Similarly, in a contract involving brick necessary to build a building the buyer's storage space may be limited so that it would be impossible to receive the entire amount of brick at once, or it may be necessary to assemble the goods as in the case of cattle on the range, or to mine them.

In such cases, a partial delivery is not subject to rejection for the defect in quantity alone, if the circumstances do not indicate a repudiation or default by the seller as to the expected balance or do not give the buyer ground for suspending his performance because of insecurity under the provisions of Section 2-609. However, in such cases the undelivered balance of goods under the contract must be forthcoming within a reasonable time and in a reasonable manner according to the policy of Section 2-503 on manner of tender of delivery. This is reinforced by the express provisions of Section 2-608 that if a lot has been accepted on the reasonable assumption that its nonconformity will be cured, the acceptance may be revoked if the cure does not seasonably occur. The section rejects the rule of *Kelly Construction Co. v. Hackensack Brick Co.*, ~~91 N.J.L. 585,~~ 103 A. 417~~, 2 A.L.R. 685~~ (N.J. 1918) and approves the result in *Lynn M. Ranger, Inc. v. Gildersleeve*, ~~106 Conn. 372,~~ 138 A. 142 (Conn. 1927) in which a contract was made for six

carloads of coal then rolling from the mines and consigned to the seller but the seller agreed to divert the carloads to the buyer as soon as the car numbers became known to him. He arranged a diversion of two cars and then notified the buyer who then repudiated the contract. The seller was held to be entitled to his full remedy for the two cars diverted because simultaneous delivery of all of the cars was not contemplated by either party.

* * *

**Definitional Cross References:**

"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Lot". Section 2-105.
"Party". Section 1-201.
"~~Rights~~Right". Section 1-201.

### Section 2-308. Absence of Specified Place for Delivery

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Sections 2-504 and 2-505.
Point 2: Section 2-503.
Point 3: Section 2-512, Articles 4, Part 5~~,~~ and 5.

* * *

### Section 2-309. Absence of Specific Time Provisions; Notice of Termination

* * *

**Official Comment**

**Prior Uniform Statutory Provision:** Subsection (1)~~-~~: see Sections 43(2), 45(2), 47(1) and 48, Uniform Sales Act, for policy continued under this Article; Subsection (2)~~-~~: none; Subsection (3)~~-~~: none.

* * *

**Purposes of Changes and New Matter:**

1. Subsection (1) requires that all actions taken under a sales contract must be taken within a reasonable time where no time has been agreed upon. The reasonable time under this provision turns on the criteria as to "reasonable time" and on good faith and commercial standards set forth

in Sections ~~1-203, 1-204 and 2-103~~1-201(b)(20), 1-205 and 1-304. It thus depends upon what constitutes acceptable commercial conduct in view of the nature, purpose and circumstances of the action to be taken. Agreement as to a definite time, however, may be found in a term implied from the contractual circumstances, usage of trade or course of dealing or performance as well as in an express term. Such cases fall outside of this subsection since in them the time for action is "agreed" by usage.

* * *

**Cross References:**

Point 1: Sections ~~1-203, 1-204 and 2-103~~1-201(b)(20), 1-205 and 1-304.
Point 2: Sections 2-320, 2-321, 2-504~~,~~ and 2-511 through 2-514.
Point 5: Section ~~1-203~~1-304.
Point 6: Section 2-609.
Point 7: Section 2-204.
Point 9: Sections 2-106, 2-318, 2-610 and 2-703.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Contract". Section 1-201.
"Notification". Section ~~1-201~~1-202.
"Party". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"Termination". Section 2-106.

**Section 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation**

* * *

**Official Comment**

* * *

**Section 2-311. Options and Cooperation Respecting Performance**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

4. The remedy provided in subsection (3) is one which does not operate in the situation which falls within the scope of Section 2-614 on substituted performance. Where the failure to cooperate results from circumstances set forth in that Section, the other party is under a duty to proffer or demand (as the case may be) substitute performance as a condition to claiming rights against the ~~noncooperating~~ non-cooperating party.

**Cross References:**

Point 1: Sections 1-201, 1-304 and 2-204 ~~and 1-203~~.
Point 3: Sections ~~1-203~~1-304 and 2-609.
Point 4: Section 2-614.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Party". Section 1-201.
"Remedy". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.

## Section 2-312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement

* * *

### Official Comment

* * *

**Cross References:**

Point 1: Section 2-403.
Point 2: Sections 2-607 and 2-725.
Point 3: Section ~~1-203~~1-304.
Point 4: Sections 2-609 and 2-725.
Point 6: Section 2-316.

* * *

## Section 2-313. Express Warranties by Affirmation, Promise, Description, Sample

* * *

### Official Comment

* * *

**Cross References:**

Point 1: Section 2-316.
Point 2: Sections ~~1-102(3)~~1-302(b) and 2-318.
Point 3: Section 2-316(2)(b).
Point 4: Section 2-316.
Point 5: Sections ~~1-205(4)~~1-303(e) and 2-314.
Point 6: Section 2-316.
Point 7: Section 2-209.
Point 8: Section 1-103.

* * *

**Section 2-314. Implied Warranty: Merchantability; Usage of Trade**

* * *

(2) Goods to be merchantable must be at least such as

* * *

(f) conform to the promises or affirmations of fact made on the container or label if any.

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Section 2-316.
Point 3: Sections ~~1-203~~1-304 and 2-104.
Point 5: Section 2-315
Point 11: Section 2-316.
Point 12: Sections 1-201, ~~1-205~~1-303 and 2-316.

* * *

**Section 2-315. Implied Warranty: Fitness for Particular Purpose**

* * *

**Official Comment**

* * *

**Section 2-316. Exclusion or Modification of Warranties**

* * *

**Official Comment**

* * *

**Cross References:**

Point 2: Sections 2-202, 2-718 and 2-719.
Point 7: Sections ~~1-205~~1-303 ~~and 2-208~~.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Course of dealing". Section ~~1-205~~1-303.
"Goods". Section 2-105.
"Remedy". Section 1-201.
"Seller". Section 2-103.
"Usage of trade". Section ~~1-205~~1-303.

**Section 2-317. Cumulation and Conflict of Warranties Express or Implied**

* * *

**Official Comment**

* * *

**Section 2-318. Third Party Beneficiaries of Warranties Express or Implied**

* * *

**Alternative C**

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

~~As amended 1966.~~

**Official Comment**

* * *

**Purposes:**

* * *

2. The purpose of this section is to give certain beneficiaries the benefit of the same warranty which the buyer received in the contract of sale, thereby freeing any such beneficiaries from any technical rules as to "privity." It seeks to accomplish this purpose without any derogation of any right or remedy resting on negligence. It rests primarily upon the merchant-seller's warranty under this Article that the goods sold are merchantable and fit for the ordinary purposes for which such goods are used rather than the warranty of fitness for a particular purpose. Implicit in the section is that any beneficiary of a warranty may bring a direct action for breach of warranty against the seller whose warranty extends to him. ~~[As amended in 1966].~~

3. This section expressly includes as beneficiaries within its provisions the family, household, and guests of the purchaser. Beyond this, the section is neutral and is not intended to enlarge or restrict the developing case law on whether the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain. The second alternative is designed for states where the case law has already developed further and for those that desire to expand the class of beneficiaries. The third alternative goes further, following the trend of modern decisions as indicated by Restatement of Torts 2d § 402A (Tentative Draft No. 10, 1965) in extending the rule beyond injuries to the person ~~[As amended in 1966]~~.

* * *

**Section 2-319. F.O.B. and F.A.S. Terms**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreed". Section 1-201.
"Bill of lading". Section 1-201.
"Buyer". Section 2-103.
"Goods". Section 2-105.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.
"Term". Section 1-201.

**Section 2-320. C.I.F. and C. & F. Terms**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Bill of lading". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Goods". Section 2-105.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.
"Term". Section 1-201.

**Section 2-321. C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival";**

**Warranty of Condition on Arrival**

* * *

**Official Comment**

* * *

**Section 2-322. Delivery "Ex-Ship"**

* * *

**Official Comment**

* * *

**Section 2-323. Form of Bill of Lading Required in Overseas Shipment; "Overseas"**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. Subsection (2) deals with the problem of bills of lading covering deep water shipments, issued not as a single bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay against presentation of the first part of a set if the part is sent from overseas even though the contract of the buyer requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming. In accord with the amendment to Section 7-304, bills of lading in a set are limited to tangible bills.

This subsection codifies that practice as between buyer and seller. ~~Article 5 (Section 5-113) authorizes banks~~Banks presenting drafts under letters of credit may ~~to~~ give indemnities against the missing parts, and this subsection means that the buyer must accept and act on such indemnities if he in good faith deems them adequate. But neither this subsection nor Article 5 decides whether a bank which has issued a letter of credit is similarly bound. The issuing bank's obligation under a letter of credit is independent and depends on its own terms. See Article 5.

**Cross Reference~~s~~:**

Section~~s~~ 2-508(2)~~, 5-113~~.

* * *

**Section 2-324. "No Arrival, No Sale" Term**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Section 1-304~~1-203~~.
Point 2: Section 2-501(a) and (c).
Point 6: Section 2-613.

* * *

**Section 2-325. "Letter of Credit" Term; "Confirmed Credit"**

* * *

**Official Comment**

**Prior Uniform Statutory Provision:** None.

* * *

1. Subsection (2) follows the general policy of this Article and Article 3 (Section ~~3-802~~3-310(b)) on conditional payment, under which payment by check or other short-term instrument is not ordinarily final as between the parties if the recipient duly presents the instrument and honor is refused. Thus the furnishing of a letter of credit does not substitute the financing agency's obligation for the buyer's, but the seller must first give the buyer reasonable notice of his intention to demand direct payment from him.

2. Subsection (3) requires that the credit be irrevocable and be a prime credit as determined by the standing of the issuer. It is not necessary, unless otherwise agreed, that the credit be a negotiation credit; the seller can finance himself by an assignment of the proceeds under Section

~~5-116(2)~~5-114.

* * *

**Cross References:**

Sections 2-403, 2-511(3) and ~~3-802~~3-310(b) and Article 5.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract for sale". Section 2-106.
"Draft". Section 3-104.
"Financing agency". Section 2-104.
"Notifies". Section ~~1-201~~1-202.
"Overseas". Section 2-323.
"Purchaser". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.
"Term". Section 1-201.

**Section 2-326. Sale on Approval and Sale or Return; Rights of Creditors**

* * *

**Official Comment**

* * *

**Section 2-327. Special Incidents of Sale on Approval and Sale or Return**

* * *

**Official Comment**

* * *

**Purposes of Changes:** To make it clear that:

1. In the case of a sale on approval~~: If~~ , if all of the goods involved conform to the contract, the buyer's acceptance of part of the goods constitutes acceptance of the whole. Acceptance of part falls outside the normal intent of the parties in the "on approval" situation and the policy of this Article allowing partial acceptance of a defective delivery has no application here. A case where a buyer takes home two dresses to select one commonly involves two distinct contracts; if not, it is covered by the words "unless otherwise agreed".

* * *

4. Notice of election to return given by the buyer in a sale on approval is sufficient to relieve him of any further liability. Actual return by the buyer to the seller is required in the case of a

sale or return contract. What constitutes due "giving" of notice, as required in "on approval" sales, is governed by the provisions on good faith and notice. "Seasonable" is used here as defined in Section ~~1-204~~1-205. Nevertheless, the provisions of both this Article and of the contract on this point must be read with commercial reason and with full attention to good faith.

**Cross References:**

Point 1: Sections 2-501, 2-601 and 2-603.
Point 2: Sections 2-607 and 2-608.
Point 4: Sections ~~1-201~~1-202 and ~~1-204~~1-205.

**Definitional Cross References:**

"~~Agreed~~Agreement". Section 1-201.
"Buyer". Section 2-103.
"Commercial unit". Section 2-105.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Merchant". Section 2-104.
"Notifies". Section ~~1-201~~1-202.
"Notification". Section ~~1-201~~1-202.
"Sale on approval". Section 2-326.
"Sale or return". Section 2-326.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-328. Sale by Auction**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Good faith". Section 1-201.
"Goods". Section 2-105.
"Lot". Section 2-105.
"Notice". Section ~~1-201~~1-202.
"Sale". Section 2-106.
"Seller". Section 2-103.

**PART 4**

**TITLE, CREDITORS AND GOOD FAITH PURCHASERS**

**Section 2-401. Passing of Title; Reservation for Security; Limited Application of This Section**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreement". Section 1-201.
"Bill of lading". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Good faith". Section ~~2-103~~1-201.
"Goods". Section 2-105.
"Party". Section 1-201.
"Purchaser". Section 1-201.
"Receipt" of goods. Section 2-103.
"Remedy". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Sale". Section 2-106.
"Security interest". Section 1-201.
"Seller". Section 2-103.
"Send". Section 1-201.

**Section 2-402. Rights of Seller's Creditors Against Sold Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Contract for sale". Section 2-106.
"Creditor". Section 1-201.
"Good faith". Section ~~2-103~~1-201.
"Goods". Section 2-105.
"Merchant". Section 2-104.
"Money". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"~~Rights~~Right". Section 1-201.

"Sale". Section 2-106.
"Seller". Section 2-103.

**Section 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting"**

* * *

**Official Comment**

* * *

4. Except as provided in subsection (1), the rights of purchasers other than buyers in ordinary course are left to the Articles on Secured Transactions, Documents of Title, and, if not repealed, Bulk Sales.

**Cross References:**

Point 1: Sections 1-103 and 1-201.
Point 2: Sections 1-201, 2-402, 7-205 and 9-320.
Points 3 and 4: Sections ~~1-102,~~ 1-201, 1-302, 2-104, 2-707 and Articles ~~6,~~ 7, ~~and~~ 9 and, if not repealed, 6.

**Definitional Cross References:**

"Buyer in ordinary course of business". Section 1-201.
"Good faith". Sections 1-201 and ~~2-103~~1-304.
"Goods". Section 2-105.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Signed". Section 1-201.
"Term". Section 1-201.
"Value". Section ~~1-201~~1-204.

**PART 5**

**PERFORMANCE**

**Section 2-501. Insurable Interest in Goods; Manner of Identification of Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreement". Section 1-201.
"Contract". Section 1-201.

"Contract for sale". Section 2-106.
"Future goods". Section 2-105.
"Goods". Section 2-105.
"Notification". Section ~~1-201~~1-202.
"Party". Section 1-201.
"Sale". Section 2-106.
"Security interest". Section 1-201.
"Seller". Section 2-103.

**Section 2-502. Buyer's Right to Goods on Seller's Repudiation, Failure to Deliver, or Insolvency**

* * *

**Official Comment**

* * *

**Section 2-503. Manner of Seller's Tender of Delivery**

* * *

**Official Comment**

* * *

**Purposes of Changes:**

* * *

2. The seller's general duty to tender and deliver is laid down in Section 2-301 and more particularly in Section 2-507. The seller's right to a receipt if he demands one and receipts are customary is governed by Section ~~1-205~~1-303. Subsection (1) of the present section proceeds to set forth two primary requirements of tender: first, that the seller "put and hold conforming goods at the buyer's disposition" and, second, that he "give the buyer any notice reasonably necessary to enable him to take delivery."

* * *

**Cross References:**

Point 2: Sections ~~1-205~~1-303, 2-301, 2-310, 2-507 and 2-513 and Article 7.
Point 5: Sections 2-308, 2-310 and 2-509.
Point 7: Section 2-614(1).

Specific matters involving tender are covered in many additional sections of this Article. See Sections ~~1-205~~1-303, 2-301, 2-306 to 2-319, 2-321(3), 2-504, 2-507(2), 2-511(1), 2-513, 2-612 and 2-614.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Bill of lading". Section 1-201.
"Buyer". Section 2-103.
"Conforming". Section 2-106.
"Contract". Section 1-201.
"Delivery". Section 1-201.
"Dishonor". Section ~~3-508~~3-502.
"Document of title". Section 1-201.
"Draft". Section 3-104.
"Goods". Section 2-105.
"Notification". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Receipt" of goods. Section 2-103.
"~~Rights~~Right". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.
"Written". Section 1-201.

**Section 2-504. Shipment by Seller**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Sections 2-319, 2-320 and 2-503(2).
Point 2: Sections ~~1-203~~1-304, 2-323(2), 2-601 and 2-614(1).
Point 3: Section 2-311(2).
Point 5: Section ~~1-203~~1-304.

**Definitional Cross References:**

"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Delivery". Section 1-201.
"Goods". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Seller". Section 2-103.
"Send". Section 1-201.
"Usage of trade". Section ~~1-205~~1-303.

**Section 2-505. Seller's Shipment Under Reservation**

* * *

**Official Comment**

* * *

**Section 2-506. Rights of Financing Agency**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Document of title". Section 1-201.
"Draft". Section 3-104.
"Financing agency". Section 2-104.
"Good faith". Section ~~2-103~~1-201.
"Goods". Section 2-105.
~~"Honor". Section 1-201.~~
"Purchase". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Value". Section ~~1-201~~1-204.

**Section 2-507. Effect of Seller's Tender; Delivery on Condition.**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract". Section 1-201.
"Delivery". Section 1-201.
"Document of title". Section 1-201.
"Goods". Section 2-105.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.

**Section 2-508. Cure by Seller of Improper Tender or Delivery; Replacement**

* * *

**Official Comment**

* * *

**Cross References:**

Point 2: Section 2-302.
Point 3: Section 2-511.
Point 4: Sections ~~1-205~~1-303 and 2-721.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conforming". Section 2-106.
"Contract". Section 1-201.
"Money". Section 1-201.
"Notifies". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-509. Risk of Loss in the Absence of Breach**

* * *

**Official Comment**

* * *

**Section 2-510. Effect of Breach on Risk of Loss**

* * *

**Official Comment**

* * *

**Section 2-511. Tender of Payment by Buyer; Payment by Check**

* * *

**Official Comment**

* * *

4. Subsection (3) is concerned with the rights and obligations as between the parties to a sales transaction when payment is made by check. This Article recognizes that the taking of a seemingly solvent party's check is commercially normal and proper and, if due diligence is exercised in collection, is not to be penalized in any way. The conditional character of the

payment under this section refers only to the effect of the transaction "as between the parties" thereto and does not purport to cut into the law of "absolute" and "conditional" payment as applied to such other problems as the discharge of sureties or the responsibilities of a drawee bank which is at the same time an agent for collection.

The phrase "by check" includes not only the buyer's own but any check which does not effect a discharge under Article 3 (Section ~~3-802~~3-310). Similarly the reason of this subsection should apply and the same result should be reached where the buyer "pays" by sight draft on a commercial firm which is financing him.

5. Under subsection (3) payment by check is defeated if it is not honored upon due presentment. This corresponds to the provisions of article on Commercial Paper. (Section ~~3-802~~3-310). But if the seller procures certification of the check instead of cashing it, the buyer is discharged. (Sections ~~3-411~~3-409(d) and 3-414(c)).

6. Where the instrument offered by the buyer is not a payment but a credit instrument such as a note or a check ~~postdated~~ post-dated by even one day, the seller's acceptance of the instrument insofar as third parties are concerned, amounts to a delivery on credit and his remedies are set forth in the section on buyer's insolvency. As between the buyer and the seller, however, the matter turns on the present subsection and the section on conditional delivery and subsequent dishonor of the instrument gives the seller rights on it as well as for breach of the contract for sale.

**Cross References:**

Point 1: Sections 2-307, 2-310, 2-320, 2-325, 2-503, 2-513 and 2-609.
Point 2: Sections 2-307, 2-310, 2-319, 2-322, 2-503, 2-504 and 2-513.
Point 3: Section 2-614.
Point 4: Section 3-310.
Point 5: Article 3, esp. Sections ~~3-802~~3-310, 3-409 and ~~3-411~~3-414.
Point 6: Sections 2-507, 2-702, and Article 3.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Check". Section 3-104.
"Dishonor". Section 3-508.
"Party". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-512. Payment by Buyer Before Inspection**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

4. Clause (b) is concerned with contracts for payment against documents and incorporates the general clarification and modification of the case law contained in the section on excuse of a financing agency. Section ~~5-114~~5-109.

* * *

**Cross References:**

Point 4: Article 5.
Point 5: Section ~~1-207~~1-308.
Point 6: Section 2-513(3).

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Financing agency". Section 2-104.
"Goods". Section 2-105.
"Remedy". Section 1-201.
"~~Rights~~Right". Section 1-201.

**Section 2-513. Buyer's Right to Inspection of Goods**.

* * *

**Official Comment**

* * *

**Cross References:**

Generally: Sections ~~2-310 (b)~~2-310(b), 2-321(3) and 2-606(1)(b).
Point 1: Section 2-607.
Point 2: Sections 2-501 and 2-502.
Point 4: Section 2-715.
Point 5: Section 2-321(3).
Point 6: Sections 2-606 to 2-608.
Point 7: Section ~~1-204~~1-205.
Point 8: Comment to Section 2-401.
Point 9: Section 2-316(2)(b).

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conform". Section 2-106.

"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Document of title". Section 1-201.
"Goods". Section 2-105
"Party". Section 1-201.
"Presumed". Section ~~1-201~~1-206.
"Reasonable time". Section ~~1-204~~1-205.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.
"Send". Section 1-201.
"Term". Section 1-201.

**Section 2-514. When Documents Deliverable on Acceptance; When on Payment**

* * *

**Official Comment**

* * *

**Purposes of Changes:** To make the provision one of general application so that:

1. It covers any document against which a draft may be drawn, whatever may be the form of the document, and applies to interpret the action of a seller or consignor insofar as it may affect the rights and duties of any buyer, consignee or financing agency concerned with the paper. Supplementary or corresponding provisions are found in Sections 4-503 and ~~5-112~~5-108.

* * *

**Cross References:**

Point 1: See Sections 2-502, 2-505(2), 2-507(2), 2-512, 2-513, 2-607 concerning protection of rights of buyer and seller, and 4-503 and ~~5-112~~5-108 on delivery of documents.

* * *

**Section 2-515. Preserving Evidence of Goods in Dispute**

* * *

**Official Comment**

* * *

**Cross References:**

Point 2: Sections 2-513(3), 2-706 and 2-711(2) and Article 5.
Point 3: Sections ~~1-202~~1-307 and ~~1-207~~1-308.

**Definitional Cross References:**

"Conform". Section 2-106.
"Goods". Section 2-105.
"Notification". Section ~~1-201~~1-202.
"Party". Section 1-201.

## PART 6

## BREACH, REPUDIATION AND EXCUSE

### Section 2-601. Buyer's Rights on Improper Delivery

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Commercial unit". Section 2-105.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Installment contract". Section 2-612.
"~~Rights~~Right". Section 1-201.

### Section 2-602. Manner and Effect of Rightful Rejection

* * *

**Official Comment**

* * *

**Purposes of Changes:** To make it clear that:

1. A tender or delivery of goods made pursuant to a contract of sale, even though wholly non-conforming, requires affirmative action by the buyer to avoid acceptance. Under subsection (1), therefore, the buyer is given a reasonable time to notify the seller of his rejection, but without such seasonable notification his rejection is ineffective. The sections of this Article dealing with inspection of goods must be read in connection with the buyer's reasonable time for action under this subsection. Contract provisions limiting the time for rejection fall within the rule of the section on "Time" and are effective if the time set gives the buyer a reasonable time for discovery of defects. What constitutes a due "notifying" of rejection by the buyer to the seller is defined in Section ~~1-201~~1-202.

* * *

**Cross References:**

Point 1: Sections ~~1-201~~1-202, ~~1-204(1) and (3)~~1-205, 1-302, 2-512(2), 2-513(1) and 2-606(1)(b).
Point 2: Section 2-603(1).
Point 3: Section 2-703.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Commercial unit". Section 2-105.
"Goods". Section 2-105.
"Merchant". Section 2-104.
"Notifies". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Remedy". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.
"Security interest". Section 1-201.
"Seller". Section 2-103.

**Section 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. The limitations on the buyer's duty to resell under subsection (1) are to be liberally construed. The buyer's duty to resell under this section arises from commercial necessity and thus is present only when the seller has "no agent or place of business at the market of rejection". A financing agency which is acting ~~in~~ on behalf of the seller in handling the documents rejected by the buyer is sufficiently the seller's agent to lift the burden of salvage resale from the buyer. (See provisions of Sections 4-503 and ~~5-112~~5-108(h) on a bank's duties with respect to rejected documents.) The buyer's duty to resell is extended only to goods in his "possession or control", but these are intended as words of wide, rather than narrow, import. In effect, the measure of the buyer's "control" is whether he can practicably effect control without undue commercial burden.

* * *

**Cross References:**

Point 2: Sections 4-503 and ~~5-112~~5-108.
Point 5: Section ~~1-106~~1-305. Compare generally section 2-706.

* * *

**Section 2-604. Buyer's Options as to Salvage of Rightfully Rejected Goods**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-602(1), and 2-603(1) and 2-706.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Notification". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-605. Waiver of Buyer's Objections by Failure to Particularize**

* * *

**Official Comment**

* * *

**Cross References:**

Point 2: Section 2-508.
Point 4: Sections 2-512(2), 2-606(1)(b)~~,~~ and 2-607(2).

**Definitional Cross References:**

"Between merchants". Section 2-104.
"Buyer". Section 2-103.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.
"Writing" and "written". Section 1-201.

**Section 2-606. What Constitutes Acceptance of Goods**

* * *

**Official Comment**

* * *

**Section 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach after Acceptance; Notice of Claim or Litigation to Person Answerable Over**

* * *

**Official Comment**

* * *

7. Subsections (3)(b) and (5)(b) give a warrantor against infringement an opportunity to defend or compromise third-party claims or be relieved of his liability. Subsection (5)(a) codifies for all warranties the practice of voucher to defend. Compare Section ~~3-803~~3-119. Subsection (6) makes these provisions applicable to the buyer's liability for infringement under Section 2-312.

* * *

**Cross References:**

Point 1: Section 1-201.
Point 2: Section 2-608.
Point 4: Sections ~~1-204~~1-205 and 2-605.
Point 5: Section 2-318.
Point 6: Section 2-717.
Point 7: Sections 2-312 and ~~3-803~~3-119.
Point 8: Section ~~1-207~~1-308.

**Definitional Cross References:**

"Burden of establishing". Section 1-201.
"Buyer". Section 2-103.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Remedy". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.

**Section 2-608. Revocation of Acceptance in Whole or in Part**

* * *

**Official Comment**

* * *

**Cross References:**

Point 3: Section 2-721.
Point 4: Sections ~~1-204~~1-205, 2-602 and 2-607.
Point 5: Sections 2-605 and 2-607.
Point 7: Section 2-601.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Commercial unit". Section 2-105.
"Conform". Section 2-106.
"Goods". Section 2-105.
"Lot". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"~~Rights~~Right". Section 1-201.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-609. Right to Adequate Assurance of Performance**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. Subsection (2) of the present section requires that "reasonable" grounds and "adequate" assurance as used in subsection (1) be defined by commercial rather than legal standards. The express reference to commercial standards carries no connotation that the obligation of good faith is not equally applicable here.

* * *

Thus a buyer who falls behind in "his account" with the seller, even though the items involved have to do with separate and legally distinct contracts, impairs the seller's expectation of due performance. Again, under the same test, a buyer who requires precision parts which he intends to use immediately upon delivery, may have reasonable grounds for insecurity if he discovers that his seller is making defective deliveries of such parts to other buyers with similar needs. Thus, too, in a situation such as arose in *Jay Dreher Corp.~~oration~~ v. Delco Appliance Corp.~~oration~~*, 93 F.2d 275 (~~C.C.A.2,~~2d Cir. 1937), where a manufacturer gave a dealer an exclusive franchise for the sale of his product but on two or three occasions breached the

exclusive dealing clause, although there was no default in orders, deliveries or payments under the separate sales contract between the parties, the aggrieved dealer would be entitled to suspend his performance of the contract for sale under the present section and to demand assurance that the exclusive dealing contract would be lived up to. There is no need for an explicit clause tying the exclusive franchise into the contract for the sale of goods since the situation itself ties the agreements together.

* * *

4. What constitutes "adequate" assurance of due performance is subject to the same test of factual conditions. For example, where the buyer can make use of a defective delivery, a mere promise by a seller of good repute that he is giving the matter his attention and that the defect will not be repeated, is normally sufficient. Under the same circumstances, however, a similar statement by a known corner-cutter might well be considered insufficient without the posting of a guaranty or, if so demanded by the buyer, a speedy replacement of the delivery involved. By the same token where a delivery has defects, even though easily curable, which interfere with easy use by the buyer, no verbal assurance can be deemed adequate which is not accompanied by replacement, repair, money-allowance, or other commercially reasonable cure.

A fact situation such as arose in *Corn Products Refining Co. v. Fasola*, ~~94 N.J.L. 181,~~ 109 A. 505 (N.J. 1920) offers illustration both of reasonable grounds for insecurity and "adequate" assurance. In that case a contract for the sale of oils on 30 days' credit, 2% off for payment within 10 days, provided that credit was to be extended to the buyer only if his financial responsibility was satisfactory to the seller. The buyer had been in the habit of taking advantage of the discount but at the same time that he failed to make his customary 10 day payment, the seller heard rumors, in fact false, that the buyer's financial condition was shaky. Thereupon, the seller demanded cash before shipment or security satisfactory to him. The buyer sent a good credit report from his banker, expressed willingness to make payments when due on the 30 day terms and insisted on further deliveries under the contract. Under this Article the rumors, although false, were enough to make the buyer's financial condition "unsatisfactory" to the seller under the contract clause. Moreover, the buyer's practice of taking the cash discounts is enough, apart from the contract clause, to lay a commercial foundation for suspicion when the practice is suddenly stopped. These matters, however, go only to the justification of the seller's demand for security, or his "reasonable grounds for insecurity".

The adequacy of the assurance given is not measured as in the type of "satisfaction" situation affected with intangibles, such as in personal service cases, cases involving a third party's judgment as final, or cases in which the whole contract is dependent on one party's satisfaction, as in a sale on approval. Here, the seller must exercise good faith and observe commercial standards. This Article thus approves the statement of the court in *James B. Berry's Sons Co, of Illinois v. Monark Gasoline & Oil Co., Inc.*, 32 F.2d 74~~,~~ (~~C.C.A.8,~~8th Cir. 1929), that the seller's satisfaction under such a clause must be based upon reason and must not be arbitrary or capricious; and rejects the purely personal "good faith" test of the Corn Products Refining Co. case, which held that in the seller's sole judgment, if for *any* reason he was dissatisfied, he was entitled to revoke the credit. In the absence of the buyer's failure to take the 2% discount as was his custom, the banker's report given in that case would have been "adequate" assurance under this Act, regardless of the language of the "satisfaction" clause. However, the seller is reasonably entitled to feel insecure at a sudden expansion of the buyer's use of a credit term, and should be entitled either to security or to a satisfactory explanation.

* * *

**Cross References:**

Point 3: Section ~~1-203~~1-304.
Point 5: Section 2-611.
Point 6: Sections ~~1-203~~1-304 and ~~1-208~~1-309 and Articles 3 and 9.

**Definitional Cross References:**

"Aggrieved party". Section 1-201.
"Between merchants". Section 2-104.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Party". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"~~Rights~~Right". Section 1-201.
"Writing". Section 1-201.

**Section 2-610. Anticipatory Repudiation**

* * *

**Official Comment**

* * *

**Purposes:** To make it clear that:

* * *

4. After repudiation, the aggrieved party may immediately resort to any remedy he chooses provided he moves in good faith (see Section ~~1-203~~1-304). Inaction and silence by the aggrieved party may leave the matter open but it cannot be regarded as misleading the repudiating party. Therefore the aggrieved party is left free to proceed at any time with his options under this section, unless he has taken some positive action which in good faith requires notification to the other party before the remedy is pursued.

**Cross References:**

Point 1: Sections 2-609 and 2-612.
Point 2: Section 2-609.
Point 3: Section 2-612.
Point 4: Section ~~1-203~~1-304.

* * *

**Section 2-611. Retraction of Anticipatory Repudiation**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Aggrieved party". Section 1-201.
"Cancellation". Section 2-106.
"Contract". Section 1-201.
"Party". Section 1-201.
"~~Rights~~Right". Section 1-201.

**Section 2-612. "Installment Contract"; Breach**

* * *

**Official Comment**

* * *

**Purposes of Changes:** To continue prior law but to make explicit the more mercantile interpretation of many of the rules involved, so that:

* * *

6. Subsection (3) is designed to further the continuance of the contract in the absence of an overt cancellation. The question arising when an action is brought as to a single installment only is resolved by making such action waive the right ~~to~~of cancellation. This involves merely a defect in one or more installments, as contrasted with the situation where there is a true repudiation within the section on anticipatory repudiation. Whether the non-conformity in any given installment justifies cancellation as to the future depends, not on whether such non-conformity indicates an intent or likelihood that the future deliveries will also be defective, but whether the non-conformity substantially impairs the value of the whole contract. If only the seller's security in regard to future installments is impaired, he has the right to demand adequate assurances of proper future performance but has not an immediate right to cancel the entire contract. It is clear under this Article, however, that defects in prior installments are cumulative in effect, so that acceptance does not wash out the defect "waived." Prior policy is continued, putting the rule as to buyer's default on the same footing as that in regard to seller's default.

* * *

**Cross References:**

Point 2: Sections 2-307 and 2-607.
Point 3: Section ~~1-203~~1-304.
Point 5: Section~~s 2-208 and~~ 2-609.

Point 6: Section 2-610.

**Definitional Cross References:**

"Action". Section 1-201.
"Aggrieved party". Section 1-201.
"Buyer". Section 2-103.
"Cancellation". Section 2-106.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Lot". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Seasonably". Section ~~1-204~~1-205.
"Seller". Section 2-103.

**Section 2-613. Casualty to Identified Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Fault". Section 1-201.
"Goods". Section 2-105.
"Party". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.

**Section 2-614. Substituted Performance**

* * *

**Official Comment**

* * *

**Purposes:**

1. Subsection (1) requires the tender of a commercially reasonable substituted performance where agreed to facilities have failed or become commercially impracticable. Under this Article, in the absence of specific agreement, the normal or usual facilities enter into the agreement either through the circumstances, usage of trade or prior course of dealing.

This section appears between Section 2-613 on casualty to identified goods and the next

section on excuse by failure of presupposed conditions, both of which deal with excuse and complete avoidance of the contract where the occurrence or non-occurrence of a contingency which was a basic assumption of the contract makes the expected performance impossible. The distinction between the present section and those sections lies in whether the failure or impossibility of performance arises in connection with an incidental matter or goes to the very heart of the agreement. The differing lines of solution are contrasted in a comparison of *International Paper Co. v. Rockefeller*, ~~161 App. Div. 180,~~ 146 N.Y.S. 371 (App. Div. 1914), and *Meyer v. Sullivan*, ~~40 Cal. App. 723,~~ 181 P. 847 (Cal. Ct. App. 1919). In the former case a contract for the sale of spruce to be cut from a particular tract of land was involved. When a fire destroyed the trees growing on that tract the seller was held excused since performance was impossible. In the latter case the contract called for delivery of wheat "f.o.b. Kosmos Steamer at Seattle." The war led to cancellation of that line's sailing schedule after space had been duly engaged and the buyer was held entitled to demand substituted delivery at the warehouse on the line's loading dock. Under this Article, of course, the seller would also be entitled, had the market gone the other way, to make a substituted tender in that manner.
* * *

2. The substitution provided in this section as between buyer and seller does not carry over into the obligation of a financing agency under a letter of credit, since such an agency is entitled to performance which is plainly adequate on its face and without need to look into commercial evidence outside of the documents. See Article 5, especially Sections 5-102, ~~5-103~~5-108, and 5-109~~, 5-110, 5-114~~.

* * *

**Section 2-615. Excuse by Failure of Presupposed Conditions**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

4. Increased cost alone does not excuse performance unless the rise in cost is due to some unforeseen contingency which alters the essential nature of the performance. Neither is a rise or a collapse in the market in itself a justification, for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover. But a severe shortage of raw materials or of supplies due to a contingency such as war, embargo, local crop failure, unforeseen shutdown of major sources of supply or the like, which either causes a marked increase in cost or altogether prevents the seller from securing supplies necessary to his performance, is within the contemplation of this section. ~~(~~See *Ford & Sons, Ltd., v. Henry Leetham & Sons, Ltd.*, 21 Com. Cas. 55 (1915, K.B.D.).~~)~~

5. Where a particular source of supply is exclusive under the agreement and fails through casualty, the present section applies rather than the provision on destruction or deterioration of

specific goods. The same holds true where a particular source of supply is shown by the circumstances to have been contemplated or assumed by the parties at the time of contracting. (See *Davis Co. v. Hoffmann-LaRoche Chemical Works*, 178 App.Div. 855, 166 N.Y.S. 179 (App. Div. 1917), and *International Paper Co. v. Rockefeller*, 161 App.Div. 180, 146 N.Y.S. 371 (App. Div. 1914).) There is no excuse under this section, however, unless the seller has employed all due measures to assure himself that his source will not fail. (See *Canadian Industrial Alcohol Co., Ltd., v. Dunbar Molasses Co.*, 258 N.Y. 194, 179 N.E. 383, 80 A.L.R. 1173 (N.Y. 1932), and *Washington Mfg. Co. v. Midland Lumber Co.*, 113 Wash. 593, 194 P. 777 (Wash. 1921).)

* * *

8. The provisions of this section are made subject to assumption of greater liability by agreement and such agreement is to be found not only in the expressed terms of the contract but in the circumstances surrounding the contracting, in trade usage and the like. Thus the exemptions of this section do not apply when the contingency in question is sufficiently foreshadowed at the time of contracting to be included among the business risks which are fairly to be regarded as part of the dickered terms, either consciously or as a matter of reasonable, commercial interpretation from the circumstances, (See *Madeirense Do Brasil, S. A. v. Stulman-Emrick Lumber Co.*, 147 F.2d 399 (C.C.A., 2d Cir., 1945).) The exemption otherwise present through usage of trade under the present section may also be expressly negated by the language of the agreement. Generally, express agreements as to exemptions designed to enlarge upon or supplant the provisions of this section are to be read in the light of mercantile sense and reason, for this section itself sets up the commercial standard for normal and reasonable interpretation and provides a minimum beyond which agreement may not go.

* * *

**Cross References:**

Point 1: Sections 2-613 and 2-614.
Point 2: Section 1-102 1-103.
Point 5: Sections 1-203 1-304 and 2-613.
Point 6: Sections 1-102 1-103, 1-203 1-304 and 2-609.
Point 7: Section 2-614.
Point 8: Sections 1-201 1-302, 2-302 and 2-616.
Point 9: Sections 1-102 1-103, 2-306 and 2-613.

**Definitional Cross References:**

"Between merchants". Section 2-104.
"Buyer". Section 2-103.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Good faith". Section 1-201.
"Merchant". Section 2-104.
"Notifies". Section 1-201 1-202.
"Seasonably". Section 1-204 1-205.
"Seller". Section 2-103.

**Section 2-616. Procedure on Notice Claiming Excuse.**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract". Section 1-201.
"Installment contract". Section 2-612.
"Notification". Section ~~1-201~~1-202.
"Reasonable time". Section ~~1-204~~1-205.
"Seller". Section 2-103.
"Termination". Section 2-106.
"Written". Section 1-201.

**PART 7**

**REMEDIES**

**Section 2-701. Remedies for Breach of Collateral Contracts Not Impaired**

* * *

**Official Comment**

* * *

**Section 2-702. Seller's Remedies on Discovery of Buyer's Insolvency**

* * *

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them. ~~As amended in 1966.~~

**Official Comment**

**Prior Uniform Statutory Provision:** Subsection (1)~~-~~: Sections 53(1)(b), 54(1)(c) and 57, Uniform Sales Act; Subsection (2)~~-~~: none; Subsection (3)~~-~~: Section 76(3), Uniform Sales Act.

* * *

**Purposes of Changes and New Matter**: To make it clear that:

* * *

3. Because the right of the seller to reclaim goods under this section constitutes preferential treatment as against the buyer's other creditors, subsection (3) provides that such reclamation bars all his other remedies as to the goods involved. ~~As amended 1966.~~

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Buyer in ordinary course of business". Section 1-201.
"Contract". Section 1-201.
"Good faith". Section 1-201.
"Goods". Section 2-105.
"Insolvent". Section 1-201.
"Person". Section 1-201.
"Purchaser". Section 1-201.
"Receipt" of goods. Section 2-103.
"Remedy". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.
"Writing". Section 1-201.

**Section 2-703. Seller's Remedies in General**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

4. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is enforceable by action unless a different effect is specifically prescribed (Section ~~1-106~~1-305).

**Cross References:**

Point 2: Section 2-612.
Point 3: Section 2-325.
Point 4: Section ~~1-106~~1-305.

* * *

**Section 2-704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Aggrieved party". Section 1-201.
"Conforming". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.

**Section 2-705. Seller's Stoppage of Delivery in Transit or Otherwise**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-702 and 2-703.
Point 1: Sections 2-503 and 2-609~~,~~ and Article 7.
Point 2: Section 2-103 and Article 7.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract for sale". Section 2-106.
"Document of title". Section 1-201.
"Goods". Section 2-105.
"Insolvent". Section 1-201.
"Notification". Section ~~1-201~~1-202.
"Receipt" of goods. Section 2-103.
"~~Rights~~Right". Section 1-201.
"Seller". Section 2-103.

**Section 2-706. Seller's Resale Including Contract for Resale**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract". Section 1-201.
"Contract for sale". Section 2-106.
"Good faith". Section ~~2-103~~1-102.
"Goods". Section 2-105.
"Merchant". Section 2-104.
"Notification". Section ~~1-201~~1-202.
"Person in position of seller". Section 2-707.
"Purchase". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Sale". Section 2-106.
"Security interest". Section 1-201.
"Seller". Section 2-103.

**Section 2-707. "Person in the Position of a Seller"**

* * *

**Official Comment**

* * *

**Section 2-708. Seller's Damages for Non-acceptance or Repudiation**

* * *

**Official Comment**

* * *

**Section 2-709. Action for the Price**

* * *

**Official Comment**

* * *

**Cross References:**

Point 4: Section ~~1-106~~1-305.
Point 5: Sections 2-501, 2-509, 2-510 and 2-704.
Point 7: Section 2-708.

* * *

**Section 2-710. Seller's Incidental Damages**

* * *

**Official Comment**

* * *

**Section 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods**

* * *

**Official Comment**

* * *

**Purposes of Changes and New Matter:**

* * *

3. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is enforceable by action unless a different effect is specifically prescribed (Section ~~1-106~~1-305).

**Cross References:**

Point 1: Sections 2-508, 2-601(c), 2-608, 2-612 and 2-714.
Point 2: Section 2-706.
Point 3: Section ~~1-106~~1-305.

**Definitional Cross References:**

"Aggrieved party". Section 1-201.
"Buyer". Section 2-103.
"Cancellation". Section 2-106.
"Contract". Section 1-201.
"Cover". Section 2-712.
"Goods". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Receipt" of goods. Section 2-103.
"Remedy". Section 1-201.
"Security interest". Section 1-201.
"Seller". Section 2-103.

## Section 2-712. "Cover"; Buyer's Procurement of Substitute Goods

* * *

### Official Comment

* * *

**Purposes:**

* * *

4. This section does not limit cover to merchants, in the first instance. It is the vital and important remedy for the consumer buyer as well. Both are free to use cover~~: the domestic or non-merchant consumer is required only to act in normal good faith while the merchant buyer must also observe all reasonable commercial standards of fair dealing in the trade, since this falls within the definition of good faith on his part~~.

**Cross References:**

Point 1: Section 2-706.
Point 2: Section ~~1-204~~1-205.
Point 3: Sections 2-713, 2-715 and 2-716.
Point 4: Section ~~1-203~~1-304.

**Definitional Cross References:**

"Buyer". Section 2-103.
"Contract". Section 1-201.
"Good faith". Section ~~2-103~~1-201.
"Goods". Section 2-105.
"Purchase". Section 1-201.
"Remedy". Section 1-201.
"Seller". Section 2-103.

## Section 2-713. Buyer's Damages for Non-Delivery or Repudiation

* * *

### Official Comment

* * *

**Cross References:**

Point 3: Sections ~~1-106~~1-305, 2-716 and 2-723.
Point 5: Section 2-712.

* * *

**Section 2-714. Buyer's Damages for Breach in Regard to Accepted Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Conform". Section 2-106.
"Goods". Section ~~1-201~~2-105.
"Notification". Section ~~1-201~~1-202.
"Seller". Section 2-103.

**Section 2-715. Buyer's Incidental and Consequential Damages**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Section 2-608.
Point 3: Sections ~~1-203~~1-304, 2-615 and 2-719.
Point 4: Section ~~1-106~~1-305.

**Definitional Cross References:**

"Cover". Section 2-712.
"Goods". Section ~~1-201~~2-105.
"Person". Section 1-201.
"Receipt" of goods. Section 2-103.
"Seller". Section 2-103.

**Section 2-716. Buyer's Right to Specific Performance or Replevin**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Goods". Section ~~1-201~~2-105.
"~~Rights~~Right". Section 1-201.

**Section 2-717. Deduction of Damages From the Price**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Buyer". Section 2-103.
"Notifies". Section ~~1-201~~1-202.

**Section 2-718. Liquidation or Limitation of Damages; Deposits**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Aggrieved party". Section 1-201.
"Agreement". Section 1-201.
"Buyer". Section 2-103.
"Goods". Section 2-105.
"Notice". Section ~~1-201~~1-202.
"Party". Section 1-201.
"Remedy". Section 1-201.
"Seller". Section 2-103.
"Term". Section 1-201.

**Section 2-719. Contractual Modification or Limitation of Remedy**

* * *

**Official Comment**

* * *

**Section 2-720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach**

* * *

**Official Comment**

* * *

**Cross Reference**:

Section ~~1-107~~1-306.

* * *

**Section 2-721. Remedies for Fraud**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Contract for sale". Section 2-106.
"Goods". Section ~~1-201~~2-105.
"Remedy". Section 1-201.

**Section 2-722. Who Can Sue Third Parties for Injury to Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Action". Section 1-201.
"Buyer". Section 2-103.
"Contract for sale". Section 2-106.
"Goods". Section 2-105.
"Party". Section 1-201.
"~~Rights~~Right". Section 1-201.
"Security interest". Section 1-201.

**Section 2-723. Proof of Market Price: Time and Place**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Action". Section 1-201.
"Aggrieved party". Section 1-201.
"Goods". Section 2-105.
"Notifies". Section ~~1-201~~1-202.
"Party". Section 1-201.
"Reasonable time". Section ~~1-204~~1-205.
"Usage of trade". Section ~~1-205~~1-303.

**Section 2-724. Admissibility of Market Quotations**

* * *

**Official Comment**

* * *

**Section 2-725. Statute of Limitations in Contracts for Sale**

* * *

**Official Comment**

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 2A – LEASES

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**
**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1987 and revised in: (i) 1990; (ii) 1994, to correct errata; (iii) 1999, in connection with the revision of Article 9; (iv) 2001, in connection with the revision of Article 1; (v) 2002, in connection with amendments to Article 9; (vi) 2003, in connection with the revision of Article 7; (vii) 2010, in connection with amendments to Article 9; and (viii) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

## FOREWORD

* * *

## ARTICLE 2A – LEASES

## PART 1

## GENERAL PROVISIONS

### Section 2A-101. Short Title

* * *

### Official Comment

* * *

**Issues:** The drafting committee then identified and resolved several issues critical to codification:

**Scope:** The scope of the Article was limited to leases (Section 2A-102). There was no need to include ~~leases intended as security, *i.e.,*~~ security interests ~~disguised as~~ in the form of leases, as they are adequately treated in Article 9. Further, even if security interests in the form of leases ~~intended as security~~ were included, the need to preserve the distinction would remain, as policy suggests treatment significantly different from that accorded leases.

**Definition of Lease:** Lease was defined to exclude security interests in the form of leases ~~intended as security~~ (Section 2A-103(1)(j)). Given the litigation to date a revised definition of security interest was suggested for inclusion in the Act. See pre-2001 Section 1-201(37). Section 1-203 now sharpens the distinction between leases and security interests disguised as leases.

**Filing:** Except to the extent necessary to ensure priority in fixtures (Section 2A-309), ~~T~~the lessor was not required to file a financing statement against the lessee or take any other action to protect the lessor's interest in the goods (Section 2A-301). The refined definition of security interest will more clearly signal the need to file to potential lessors of goods. Those lessors who are concerned will file a protective financing statement (Section 9-505).

* * *

**Remedies:** The Article has not only provided for lessor's remedies upon default by the lessee (Sections 2A-523 through ~~2A-531~~2A-532), but also for lessee's remedies upon default by the lessor (Sections 2A-508 through 2A-522). This is a significant departure from Article 9, which provides remedies only for the secured party upon default by the debtor. This difference is compelled by the bilateral nature of the obligations between the parties to a lease.

* * *

**Relationship of Article 2A to Other Articles:**

* * *

This codification was greatly influenced by the fundamental tenet of the common law as it has developed with respect to leases of goods: freedom of the parties to contract. Note that, like all other Articles of this Act, the principles of construction and interpretation contained in Article 1 are applicable throughout Article 2A (Section 2A-103(4)). These principles include the ability of the parties to vary the effect of the provisions of Article 2A, subject to certain limitations including those that relate to the obligations of good faith, diligence, reasonableness and care (Section ~~1-102(3)~~1-302(b)). Consistent with those principles no negative inference is to be drawn by the episodic use of the phrase "unless otherwise agreed" in certain provisions of Article 2A. Section ~~1-102(4)~~1-302(c). Indeed, the contrary is true, as the general rule in the Act, including this Article, is that the effect of the Act's provisions may be varied by agreement. Section ~~1-102(3)~~1-302(a). This conclusion follows even where the statutory analogue contains the phrase and the correlative provision in Article 2A does not.

**Section 2A-102. Scope**

* * *

**Official Comment**

* * *

**Purposes:**

1. This Article governs transactions as diverse as the lease of a hand tool to an individual for a few hours and the leveraged lease of a complex line of industrial equipment to a multi-national organization for a number of years.

To achieve that end it was necessary to provide that this Article applies to any transaction, regardless of form, that creates a lease. Since lease is defined as a transfer of ~~an interest in~~ the right to possession and use of goods (Section 2A-103(1)(j)) and goods is defined to include fixtures (Section 2A-103(1)(h)), application is limited to the extent the transaction relates to goods, including fixtures. Further, since the definition of lease does not include a sale (Section 2-106(1)) or retention or creation of a security interest (Section ~~1-201(37)~~1-201(b)(35)), application is further limited; sales and security interests are governed by other Articles of this Act.

2. In recognition of the diversity of the transactions to be governed, the sophistication of many of the parties to these transactions, and the common law tradition as it applies to the bailment for hire or lease, freedom of contract has been preserved. Ronald DeKoven, Proceedings After Default by the Lessee Under a True Lease of Equipment, in 1C Peter F. Coogan, William E. Hogan~~,~~ & Detlev F. Vagts, *Secured Transactions Under the Uniform Commercial Code*, § 29B.02[2] (1986). Thus, despite the extensive regulatory scheme established by this Article, the parties to a lease will be able to create private rules to govern their transaction. Sections 2A-103(4) and ~~1-102(3)~~1-302(a). However, there are special rules in this Article governing consumer leases, as well as other state and federal statutes, that may further limit freedom of contract with respect to consumer leases.

3. A court may apply this Article by analogy to any transaction, regardless of form, that creates a lease of personal property other than goods, taking into account the expressed

intentions of the parties to the transaction and any differences between a lease of goods and a lease of other property. Such application has precedent as the provisions of the Article on Sales (Article 2) have been applied by analogy to leases of goods. *E.g.,* William D. Hawkland, *The Impact of the Uniform Commercial Code on Equipment Leasing*, 1972 Ill. L.F. 446; Daniel E. Murray, *Under the Spreading Analogy of Article 2 of the Uniform Commercial Code*, 39 Fordham L. Rev. 447 (1971). Whether such application would be appropriate for other bailments of personal property, gratuitous or for hire, should be determined by the facts of each case. *See Mieske v. Bartell Drug Co.*, ~~92 Wash.2d 40, 46-48,~~ 593 P.2d 1308, 1312 (Wash. 1979).

* * *

**Cross References:**

Sections ~~1-102(3)~~1-103(b), 1-302(a), ~~1-201(37)~~1-201(b)(35), ~~Article 2, esp. Section~~ 2-106(1), ~~and Sections~~ 2A-103(1)(g), (h), ~~2A-103(1)~~and (j), ~~and~~ 2A-103(4), 2A-209, 2A-212, 2A-213, and 2A-407.

**Definitional Cross References:**

"Finance lease". Section 2A-103(1)(g)
"Lease". Section 2A-103(1)(j).

**Section 2A-103. Definitions and Index of Definitions**

* * *

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

~~*As amended in 1990.*~~

**Official Comment**

* * *

(e) "Consumer lease". New. This Article includes a subset of rules that applies only to consumer leases. Sections 2A-106, 2A-108(2), 2A-108(4), 2A-109(2), 2A-221(b), 2A-309(5)(a), 2A-406(1)(b), 2A-407, 2A-504(3)(b), and 2A-516(3)(b).
* * *

This definition is modeled after the definition of consumer lease in the Consumer Leasing Act, 15 U.S.C. § 1667 (1982), and in the Unif. Consumer Credit Code § 1.301(14)~~, 7A U.L.A. 43 (1974)~~. However, this definition of consumer lease differs from its models in several respects: the lessor can be a person regularly engaged either in the business of leasing or of selling goods, the lease need not be for a term exceeding four months, a lease primarily for an agricultural purpose is not covered, and whether there should be a limitation by dollar amount and its amount is left up to the individual states.

* * *

(g) "Finance Lease". New. This Article includes a subset of rules that applies only to finance leases. Sections 2A-209, 2A-211(2), 2A-212(1), 2A-213, 2A-219(1), 2A-220(1)(a), 2A-221, 2A-405(c), 2A-407, 2A-516(2) and 2A-517(1)(a) and (2).

* * *

A finance lease is the product of a ~~three party~~three-party transaction. The supplier manufactures or supplies the goods pursuant to the lessee's specification, perhaps even pursuant to a purchase order, sales agreement or lease agreement between the supplier and the lessee. After the prospective finance lease is negotiated, a purchase order, sales agreement, or lease agreement is entered into by the lessor (as buyer or prime lessee) or an existing order, agreement or lease is assigned by the lessee to the lessor, and the lessor and the lessee then enter into a lease or sublease of the goods. Due to the limited function usually performed by the lessor, the lessee looks almost entirely to the supplier for representations, covenants and warranties. If a manufacturer's warranty carries through, the lessee may also look to that. Yet, this definition does not restrict the lessor's function solely to the supply of funds; if the lessor undertakes or performs other functions, express warranties, covenants and the common law will protect the lessee.

This definition focuses on the transaction, not the status of the parties; to avoid confusion it is important to note that in other contexts, *e.g.*, tax and accounting, the term finance lease has been used to connote different types of lease transactions, including leases that are disguised secured transactions. Michael D. Rice, *Equipment Financing,* 62-71 (1981). A lessor who is a merchant with respect to goods of the kind subject to the lease may be a lessor under a finance lease. Many leases that are leases back to the seller of goods (Section 2A-308(3)) will be finance leases. This conclusion is easily demonstrated by a hypothetical. Assume that B has bought goods from C pursuant to a sales contract. After delivery to and acceptance of the goods by B, B negotiates to sell the goods to A and simultaneously to lease the goods back from A, on terms and conditions that, we assume, will qualify the transaction as a lease. Section 2A-103(1)(j). In documenting the sale and lease back, B assigns the original sales contract between B, as buyer, and C, as seller, to A. A review of these facts leads to the conclusion that the lease from A to B qualifies as a finance lease, as all three conditions of the definition are satisfied. Subparagraph (i) is satisfied as A, the lessor, had nothing to do with the selection, manufacture, or supply of the equipment. Subparagraph (ii) is satisfied as A, the lessor, bought the equipment at the same time that A leased the equipment to B, which certainly is in connection with the lease. Finally, subparagraph (iii)(A) is satisfied as A entered into the sales contract with B at the same time that A leased the equipment back to B. B, the lessee, will have received a copy of the sales contract in a timely fashion.

* * *

Pursuant to the Uniform Commercial Code Amendments (2022) ~~(2022 Amendments)~~, some references in this Article to the terms "writing," "writings," or "written" have been changed to refer to a "record." These changes are made in provisions where an affected party may be assumed to have assented to the use of a record that is not a writing. For example, Section 2A-201 involves a record signed by an affected party and Section 2A-202 refers to a record intended by parties to be a final expression of their agreement. Where such references

remain in this Article, the use by parties of a record other than a writing may be given effect for purposes of this Article under law other than the Uniform Commercial Code, such as the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., and the Uniform Electronic Transactions Act.

* * *

(j) "Lease". New. There are several reasons to codify the law with respect to leases of goods. An analysis of the case law as it applies to leases of goods suggests at least several significant issues to be resolved by codification. First and foremost is the definition of a lease. It is necessary to define lease to determine whether a transaction creates a lease or a security interest disguised as a lease. If the transaction creates a security interest disguised as a lease, the transaction will be governed by the Article on Secured Transactions (Article 9) and the lessor will be required to file a financing statement or take other action to perfect its interest in the goods against third parties. There is no such requirement with respect to leases under the common law and, except with respect to leases of fixtures (Section 2A-309), this Article imposes no such requirement. Yet the distinction between a lease and a security interest disguised as a lease is not clear from the case law at the time of the promulgation of this Article. Ronald DeKoven, *Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision,* 12 U.S.F. L. Rev. 257 (1978).

At common law a lease of personal property is a bailment for hire. While there are several definitions of bailment for hire, all require a thing to be let and a price for the letting. Thus, in modern terms and as provided in this definition, a lease is created when the lessee agrees to furnish consideration for the right to the possession and use of goods over a specified period of time. Charles W. Mooney, *Personal Property Leasing: A Challenge,* 36 Bus. Law. 1605, 1607 (1981). Further, a lease is neither a sale (Section 2-106(1)) nor a retention or creation of a security interest (Section 1-201(b)(35) and 1-203). Due to extensive litigation to distinguish true leases from security interests, an amendment to former Section 1-201(37) (now codified as Section 1-203) was promulgated with this Article to create a sharper distinction.

This section as well as Section 1-203 must be examined to determine whether the transaction in question creates a lease or a security interest. The following hypotheticals indicate the ~~perimeters~~ parameters of the issue. Assume that A has purchased a number of copying machines, new, for $1,000 each; the machines have an estimated useful economic life of three years. A advertises that the machines are available to rent for a minimum of one month and that the monthly rental is $100.00. A intends to enter into leases where A provides all maintenance, without charge to the lessee. Further, the lessee will rent the machine, month to month, with no obligation to renew. At the end of the lease term the lessee will be obligated to return the machine to A's place of business. This transaction qualifies as a lease under the first ~~half~~ clause of the definition, for the transaction includes a transfer by A to a prospective lessee of possession and use of the machine for a stated term, month to month. The machines are goods (Section 2A-103(1)(h)). The lessee is obligated to pay consideration in return, $100.00 for each month of the term.

However, the second half of the definition provides that a sale or a security interest is not a lease. Since there is no passing of title, there is no sale. Sections 2A-103(3) and 2-106(1). Under pre-Act security law this transaction would have created a bailment for hire or a true lease and not a conditional sale. *Da Rocha v. Macomber*, ~~330 Mass. 611, 614-15,~~ 116 N.E.2d 139, 142

(Mass. 1953). Under Section 1-203, the same result would follow. While the lessee is obligated to pay rent for the ~~one month~~one-month term of the lease, one of the other four conditions of Section 1-203(b) must be met and none is. The term of the lease is one month and the economic life of the machine is 36 months; thus, Section 1-203(b)(1) is not now satisfied. Considering the amount of the monthly rent, absent economic duress or coercion, the lessee is not bound either to renew the lease for the remaining economic life of the goods or to become the owner. If the lessee did lease the machine for 36 months, the lessee would have paid the lessor $3,600 for a machine that could have been purchased for $1,000; thus, Section 1-203(b)(2) is not satisfied. Finally, there are no options; thus, subparagraphs (3) and (4) of Section 1-203(b) are not satisfied. This transaction creates a lease, not a security interest. However, with each renewal of the lease the facts and circumstances at the time of each renewal must be examined to determine if that conclusion remains accurate, as it is possible that a transaction that first creates a lease, later creates a security interest.

Assume that the facts are changed and that A requires each lessee to lease the goods for 36 months, with no right to terminate. Under pre-Act security law this transaction would have created a conditional sale, and not a bailment for hire or true lease. *Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664, 672-73 (1876). Under this subsection~~,~~ and Section 1-203, the same result would follow. The lessee's obligation for the term is not subject to termination by the lessee and the term is equal to the economic life of the machine.

* * *

**Section 2A-104. Leases Subject to Other Law**

* * *

(3) Failure to comply with an applicable law has only the effect specified therein.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

2. Subsection (1) states the general rule that a lease, although governed by the scheme of this Article, also may be governed by certain other applicable laws. This may occur in the case of a consumer lease. Section 2A-103(1)(e). Those laws may be state statutes existing prior to enactment of Article 2A or passed afterward. In this case, it is desirable for this Article to specify which statute controls. Or the law may be a pre-existing consumer protection decision. This Article preserves such decisions. Or the law may be a statute of the United States. Such a law controls without any statement in this Article under applicable principles of preemption.

An illustration of a statute of the United States that governs consumer leases is the Consumer Leasing Act, 15 U.S.C. §§ 1667–1667(e) (1982) and its implementing regulation,

Regulation M, 12 C.F.R. § 213 (1986); the statute mandates disclosures of certain lease terms, delimits the liability of a lessee in leasing personal property, and regulates the advertising of lease terms. An illustration of a state statute that governs consumer leases and which if adopted in the enacting state prevails over this Article is the Uniform~~.~~ Consumer Credit Code, which includes many provisions similar to those of the Consumer Leasing Act, e.g. Unif. Consumer Credit Code §§ 3.202, 3.209, 3.401~~, 7A U.L.A. 108-09, 115, 125~~ (1974), as well as provisions in addition to those of the Consumer Leasing Act, e.g., Unif. Consumer Credit Code §§ 5.109–5.111~~, 7A U.L.A. 17-1-76~~ (1974) (the right to cure a default). Such statutes may define consumer lease so as to govern transactions within and without the definition of consumer lease under this Article.

3. Under subsection (2), subject to certain limited exclusions, in case of conflict a statute or a decision described in subsection (1) prevails over this Article. For example, a provision like Unif. Consumer Credit Code § 5.112~~, 7A U.L.A. 176~~ (1974), limiting self-help repossession, prevails over Section 2A-525(3). A consumer protection decision rendered after the effective date of this Article may supplement its provisions. For example, in relation to Article 9 a court might conclude that an acceleration clause may not be enforced against an individual debtor after late payments have been accepted unless a prior notice of default is given. To the extent the decision establishes a general principle applicable to transactions other than secured transactions, it may supplement Section 2A-502.

4. Consumer protection in lease transactions is primarily left to other law. However, several provisions of this Article do contain special rules that may not be varied by agreement in the case of a consumer lease. *E.g.*, Sections 2A-106, ~~2A-108~~2A-108(2), and 2A-109(2). Were that not so, the ability of the parties to govern their relationship by agreement together with the position of the lessor in a consumer lease too often could result in a one-sided lease agreement.

* * *

**Cross References:**

Sections 2A-103(1)(e), 2A-105, 2A-106, ~~2A-108~~2A-108(2), 2A-109(2), 2A-304(3), 2A-305(3), 2A-502, and 2A-525(3).

* * *

**Section 2A-105. Territorial Application of Article to Goods Covered by Certificate of Title**

* * *

**Official Comment**

* * *

**Changes:**

Substantially revised. The provisions of the last sentence of former Section 9-103(2)(b)

were not incorporated as they are superfluous in this context. The provisions of former Section 9-103(2)(d) were not incorporated because the problems dealt with are adequately addressed by this section and Sections 2A-304(3) and 2A-305(3).

* * *

**Cross References:**

Sections 2A-304(3), ~~and~~ 2A-305(3)~~; former Sections 9-103(2)(b) and 9-103(2)(d) (now codified as Sections~~ 9-303, and 9-316(d)~~, and 9-337)~~.

* * *

**Section 2A-106. Limitation on Power of Parties to Consumer Lease to Choose Applicable Law and Judicial Forum**

* * *

**Official Comment**

**Uniform Statutory Source:** Unif. Consumer Credit Code § 1.201(8)~~, 7A U.L.A. 36 (1974)~~.

* * *

**Definitional Cross References:**

"Consumer lease". Section 2A-103(1)(e).
"Lease agreement". Section 2A-103(1)(k).
"Lessee". Section 2A-103(1)(n).
"Goods". Section 2A-103(1)(h).
"Party". Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-107. Waiver or Renunciation of Claim or Right After Default**

* * *

**Official Comment**

**Uniform Statutory Source:** Former Section 1-107.

**Changes:**

1. Revised to reflect leasing practices and terminology. ~~This clause~~ The prior statement is used throughout the official comments to this Article to indicate the scope of change in the provisions of the Uniform Statutory Source included in the section; these changes range from one extreme, *e.g.,* a significant difference in practice (a warranty as to merchantability is not implied in a finance lease (Section 2A-212)) to the other extreme, *e.g.,* a modest difference in style or terminology (the transaction governed is a lease not a sale (Section 2A-103-*)).

* * *

**Cross References:**

Sections 2A-103-* and 2A-212.

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Record", Section 1-201(b)(31).
"~~Rights~~Right". Section ~~1-201(36)~~1-201(b)(34).
"Signed". Section ~~1-201(39)~~1-201(b)(37).
~~"Written". Section 1-201(46).~~

~~* *Previous incorrect cross reference corrected by Permanent Editorial Board action November 1992.*~~

**Section 2A-108. Unconscionability**

* * *

**Official Comment**

**Uniform Statutory Source:** Section 2-302 and Unif. Consumer Credit Code § 5.108~~, 7A U.L.A. 167-69~~ (1974).

**Changes:**

Subsection (1) is taken almost verbatim from the provisions of Section 2-302(1). Subsection (2) is suggested by the provisions of Unif. Consumer Credit Code § 5.108(1), (2)~~, 7A U.L.A. 167~~ (1974). Subsection (3), taken from the provisions of Section 2-302(2), has been expanded to cover unconscionable conduct. Unif. Consumer Credit Code § 5.108(3)~~, 7A U.L.A. 167~~ (1974). The provision for the award of attorney's fees to consumers, subsection (4), covers unconscionability under subsection (1) as well as (2). Subsection (4) is modeled on the provisions of Unif. Consumer Credit Code § 5.108(6)~~, 7A U.L.A. 169~~ (1974).

**Purposes:**

Subsections (1) and (3) of this section apply the concept of unconscionability reflected in the provisions of Section 2-302 to leases. *See Dillman & Assocs. v. Capitol Leasing Co.*, ~~110 Ill.App.3d 335, 342,~~ 442 N.E.2d 311, 316 (Ill. App. Ct. 1982). Subsection (3) omits the adjective "commercial" found in subsection 2-302(2) because subsection (3) is concerned with all leases and the relevant standard of conduct is determined by the context.

The balance of the section is modeled on the provisions of Unif. Consumer Credit Code § 5.108~~, 7A U.L.A. 167-69~~ (1974). Thus subsection (2) recognizes that a consumer lease or a clause in a consumer lease may not itself be unconscionable but that the agreement would never have been entered into if unconscionable means had not been employed to induce the consumer

to agree. To make a statement to induce the consumer to lease the goods, in the expectation of invoking an integration clause in the lease to exclude the statement's admissibility in a subsequent dispute, may be unconscionable. Subsection (2) also provides a consumer remedy for unconscionable conduct, such as using or threatening to use force or violence, in the collection of a claim arising from a lease contract. These provisions are not exclusive. The remedies of this section are in addition to remedies otherwise available for the same conduct under other law, for example, an action in tort for abusive debt collection or under another statute of this State for such conduct. The reference to appropriate relief in subsection (2) is intended to foster liberal administration of this remedy. Sections 2A-103(4) and ~~1-106(1)~~1-305.

* * *

**Cross References:**

Sections ~~1-106(1)~~1-305, 2-302, and 2A-103(4).

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Consumer lease". Section 2A-103(1)(e).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Party". Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-109. Option to Accelerate at Will**

* * *

**Official Comment**

**Uniform Statutory Source:** Former Section 1-208 and Unif. Consumer Credit Code § 5.109(2)~~, 7A U.L.A. 171~~ (1974).

**Purposes:**

Subsection (1) reflects modest changes in style to the provisions of the first sentence of former Section 1-208.

Subsection (2), however, reflects a significant change in the provisions of the second sentence of former Section 1-208 by creating a new rule with respect to a consumer lease. A lease provision allowing acceleration at the will of the lessor or when the lessor deems itself insecure is of critical importance to the lessee. In a consumer lease it is a provision that is not usually agreed to by the parties but is usually mandated by the lessor. Therefore, where its invocation depends not on specific criteria but on the discretion of the lessor, its use should be regulated to prevent abuse. Subsection (1) imposes a duty of good faith upon its exercise. Subsection (2) shifts the burden of establishing good faith to the lessor in the case of a consumer lease, but not otherwise.

**Cross Reference:**

Former Section 1-208 (now codified as Section 1-309).

**Definitional Cross References:**

"Burden of establishing". Section ~~1-201(8)~~1-201(b)(8).
"Consumer lease". Section 2A-103(1)(e).
"Good faith". ~~Sections 1-201(19) and 2-103(1)(b)~~Section 1-201(b)(20).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Term". Section ~~1-201(42)~~1-201(b)(40).

PART 2

## FORMATION AND CONSTRUCTION OF LEASE CONTRACT

### Section 2A-201. Statute of Frauds

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-201, 9-108, and 9-203(b)(3)(A).

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Buying". Section 2A-103(1)(a).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notice". Section ~~1-201(25)~~1-202(a).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Record". Section 1-201(b)(31)
"Sale". Section 2-106(1).
"Signed". Section ~~1-201(39)~~1-201(b)(37).
"Term". Section ~~1-201(42)~~1-201(b)(40).
~~"Writing". Section 1-201(46).~~

### Section 2A-202. Final Expression: Parol or Extrinsic Evidence

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Course of dealing". Section ~~1-205~~1-303(b).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Record". Section 1-201(b)(31).
"Term". Section ~~1-201(42)~~1-201(b)(40).
"Usage of trade". Section ~~1-205~~1-303(c).
~~"Writing". Section 1-201(46).~~

**Section 2A-203. Seals Inoperative**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Lease contract". Section 2A-103(1)(*l* ).
~~"Writing". Section 1-201(46)~~"Record". Section 1-201(b)(31).

**Section 2A-204. Formation in General**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Lease contract". Section 2A-103(1)(*l* ).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Term". Section ~~1-201(42)~~1-201(b)(40).

**Section 2A-205. Firm Offers**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Merchant". Section 2-104(1).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Record". Section 1-201(b)(31)
"Signed". Section ~~1-201(39)~~1-201(b)(37).
"Term". Section ~~1-201(42)~~1-201(b)(40).
~~"Writing". Section 1-201(46).~~

**Section 2A-206. Offer and Acceptance in Formation of Lease Contract**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Lease contract". Section 2A-103(1)(*l* ).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).

**Section 2A-207. [Deleted]**

**Section 2A-208. Modification, Rescission and Waiver**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-201 and 2-209.

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Between merchants". Section 2-104(3).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Merchant". Section 2-104(1).
"Notification". Section ~~1-201(26)~~1-202(d).
"Party". Section ~~1-201(29)~~1-201(b)(26).

"Record". Section 1-201(b)(31)
"Signed". Section ~~1-201(39)~~1-201(b)(37).
"Term". Section ~~1-201(42)~~1-201(b)(40).
~~"Writing". Section 1-201(46).~~

**Section 2A-209. Lessee Under Finance Lease as Beneficiary of Supply Contract**

* * *

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Changes:** This section is modeled on former Section 9-318 (now codified as Sections 9-404 through 9-406), the Restatement (Second) of Contracts §§ 302–315 (1981), and leasing practices. *See Earman Oil Co. v. Burroughs Corp.*, 625 F.2d 1291, 1296-97 (5th Cir. 1980).

**Purposes:**

1. The function performed by the lessor in a finance lease is extremely limited. Section 2A-103(1)(g). The lessee looks to the supplier of the goods for warranties and the like or, in some cases as to warranties, to the manufacturer if a warranty made by that person is passed on. That expectation is reflected in subsection (1), which is self-executing. As a matter of policy, the operation of this provision may not be excluded, modified or limited; however, an exclusion, modification, or limitation of any term of the supply contract or warranty, including any with respect to rights and remedies, and any defense or claim such as a statute of limitations, effective against the lessor as the acquiring party under the supply contract, is also effective against the lessee as the beneficiary designated under this provision. For example, the supplier is not precluded from excluding or modifying an express or implied warranty under a supply contract. Sections 2-312(2) and 2-316, or Section 2A-214. Further, the supplier is not precluded from limiting the rights and remedies of the lessor and from liquidating damages. Sections 2-718 and 2-719, or Sections 2A-503 and 2A-504. If the supply contract excludes or modifies warranties, limits remedies, or liquidates damages with respect to the lessor, such provisions are enforceable against the lessee as beneficiary. Thus, only selective discrimination against the beneficiaries designated under this section is precluded, i.e., exclusion of the supplier's liability to the lessee with respect to warranties made to the lessor. This section does not affect the development of other law with respect to products liability.

2. Enforcement of this benefit is by action. Sections 2A-103(4) and ~~1-106(2)~~1-305.

* * *

**Cross References:**

Sections 1-305(b), 2-312(2), 2-316, 2-318, 2-718, 2-719, 2A-103(1)(g), 2A-103(4), 2A-214, 2A-216, 2A-407, 2A-503, 2A-504, 9-404, 9-405, and 9-406.

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Finance lease". Section 2A-103(1)(g).
"Leasehold interest". Section 2A-103(1)(m).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notice". Section ~~1-201(25)~~1-202(a).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Supplier". Section 2A-103(1)(x).
"Supply contract". Section 2A-103(1)(y).
"Term". Section ~~1-201(42)~~1-201(b)(40).

**Section 2A-210. Express Warranties**

* * *

**Official Comment**

* * *

**Purposes:**

All of the express and implied warranties of the Article on Sales (Article 2) are included in this Article, revised to reflect the differences between a sale of goods and a lease of goods. Sections 2A-210 through 2A-216. The lease of goods is sufficiently similar to the sale of goods to justify this decision. William D. Hawkland, *The Impact of the Uniform Commercial Code on Equipment Leasing*, 1972 Ill. L.F. 446, 45 9-60. Many state and federal courts have reached the same conclusion.

* * *

**Cross References:**

~~Article 2, esp.~~ Section~~s~~ 2-313~~,~~ and ~~Sections~~ 2A-210 through 2A-216.

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-211. Warranties Against Interference and Against Infringement;**

**Lessee's Obligation Against Infringement**

* * *

**Official Comment**

* * *

**Changes:**

This section is modeled on the provisions of Section 2-312, with modifications to reflect the limited interest transferred by a lease contract and the total interest transferred by a sale. Section 2-312(2), which is omitted here, is incorporated in Section 2A-214. The warranty of quiet possession was abolished with respect to sales of goods. Section 2-312 ~~official comment~~ Comment 1. Section 2A-211(1) reinstates the warranty of quiet possession with respect to leases. Inherent in the nature of the limited interest transferred by the lease – the right to possession and use of the goods – is the need of the lessee for protection greater than that afforded to the buyer. Since the scope of the protection is limited to claims or interests that arose from acts or omissions of the lessor, the lessor will be in position to evaluate the potential cost, certainly a far better position than that enjoyed by the lessee. Further, to the extent the market will allow, the lessor can attempt to pass on the anticipated additional cost to the lessee in the guise of higher rent.

**Purposes:**

General language was chosen for subsection (1) that expresses the essence of the lessee's expectation: with an exception for infringement and the like, no person holding a claim or interest that arose from an act or omission of the lessor will be able to interfere with the lessee's use and enjoyment of the goods for the lease term. Subsection (2), like other similar provisions in later sections, excludes the finance lessor from extending this warranty; with few exceptions (Sections 2A-210 and 2A-211(1)), the lessee under a finance lease is to look to the supplier for warranties and the like or, in some cases as to warranties, to the manufacturer if a warranty made by that person is passed on. Subsections (2) and (3) are derived from Section 2-312(3). These subsections, as well as the analogue, should be construed so that applicable principles of law and equity supplement their provisions. Sections 2A-103(4) and 1-103(b).

**Cross References:**

Sections 1-103(b), 2-312, ~~2-312(1), 2-312(2), 2-312 official comment 1,~~ 2A-103(4), 2A-210, ~~2A-211(1)~~ and 2A-214.

**Definitional Cross References:**

"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).

"Lease contract". Section 2A-103(1)(*l* ).
"Leasehold interest". Section 2A-103(1)(m).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Merchant". Section 2-104(1).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Supplier". Section 2A-103(1)(x).

**Section 2A-212. Implied Warranty of Merchantability**

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

**Official Comment**

* * *

**Changes:**

Revised to reflect leasing practices and terminology. *E.g.*, *Glenn Dick Equip. Co. v. Galey Constr., Inc.*, ~~97 Idaho 216, 225,~~ 541 P.2d 1184, 1193 (Idaho 1975) (implied warranty of merchantability (Article 2) extends to lease transactions).

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Course of dealing". Section ~~1-205~~1-303(b).
"Finance lease". Section 2A-103(1)(g).
"Fungible goods". Section ~~1-201(17)~~1-201(b)(18).
"Goods". Section 2A-103(1)(h).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessor". Section 2A-103(1)(p).
"Merchant". Section 2-104(1).
"Usage of trade". Section ~~1-205~~1-303(c).

**Section 2A-213. Implied Warranty of Fitness for Particular Purpose**

* * *

**Official Comment**

* * *

**Changes:**

Revised to reflect leasing practices and terminology. *E.g.*, *All-States Leasing Co. v. Bass*, ~~96 Idaho 873, 879,~~ 538 P.2d 1177, 1183 (Idaho 1975) (implied warranty of fitness for a particular purpose (Article 2) extends to lease transactions).

**Definitional Cross References:**

"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Knows". Section ~~1-201(25)~~1-202(b).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).

**Section 2A-214. Exclusion or Modification of Warranties**

* * *

**Official Comment**

* * *

**Purposes:**

1. These changes were made to reflect leasing practices. *E.g., FMC Finance Corp. v. Murphree,* 632 F.2d 413, 418 (5th Cir. 1980) (disclaimer of implied warranty under lease transactions must be conspicuous and in writing). The omission of the provisions of Section 2-316(4) was not substantive. Sections 2A-503 and 2A-504.

* * *

**Cross References:**

Sections 1-201(b)(10), ~~Article 2, esp. Sections~~ 2-312(2), ~~and~~ 2-316, ~~and Sections~~ 2A-202, 2A-211, 2A-503, and 2A-504.

**Definitional Cross References:**

"Conspicuous". Section ~~1-201(10)~~1-201(b)(10).
"Course of dealing". Section ~~1-205~~1-303(b).
"Fault". Section 2A-103(1)(f).
"Goods". Section 2A-103(1)(h).
"Knows". Section ~~1-201(25)~~1-202(b).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Usage of trade". Section ~~1-205~~1-303(c).
"Writing". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-215. Cumulation and Conflict of Warranties Express or Implied**

* * *

**Official Comment**

* * *

**Definitional Cross Reference:**

"Party". Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-216. Third-Party Beneficiaries of Express and Implied Warranties**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

This Article does not purport to change the development of the relationship of the common law, with respect to products liability, including strict liability in tort (as restated in Restatement (Second) of Torts, § 402A (1965)), to the provisions of this Act. *Compare Cline v. Prowler Indus. of Maryland*, 418 A.2d 968 (Del.1980) and *Hawkins Constr. Co. v. Matthews*

*Co.*, ~~190 Neb. 546,~~ 209 N.W.2d 643 (Neb. 1973) with *Dippel v. Sciano*, ~~37 Wis.2d 443,~~ 155 N.W.2d 55 (Wis. 1967).

**Cross References:**

~~Article 2, esp.~~ Sections 2-318, ~~and Sections~~ 2A-214, 2A-503, and 2A-504.

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).

**Section 2A-217. Identification**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessor". Section 2A-103(1)(p).
"Party". Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-218. Insurance and Proceeds**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-501~~, 2-501(2)~~ and 2A-217.

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Buying". Section 2A-103(1)(a).
"Conforming". Section 2A-103(1)(d).

"Goods". Section 2A-103(1)(h).
"Insolvent". Section ~~1-201(23)~~1-201(b)(23).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notification". Section ~~1-201(26)~~1-202(d).
"Party". Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-219. Risk of Loss**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-509(1), 2-509(2), ~~and~~ 2-509(4), and 2A-220.

**Definitional Cross References:**

"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Merchant". Section 2-104(1).
"Receipt". Section 2-103(1)(c).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Supplier". Section 2A-103(1)(x).

**Section 2A-220. Effect of Default on Risk of Loss**

* * *

**Official Comment**

* * *

**Changes:**

Revised to reflect leasing practices and terminology. The rule in Section (1)(b) does not allow the lessee under a finance lease to treat the risk of loss as having remained with the supplier from the beginning. This is appropriate given the limited circumstances under which the lessee under a finance lease is allowed to revoke acceptance. Section 2A-517 and Section 2A-516 ~~official comment~~Comment.

**Cross References:**

Sections 2A-516 and 2A-517.

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Supplier". Section 2A-103(1)(x).

**Section 2A-221. Casualty to Identified Goods**

* * *

**Official Comment**

* * *

**Cross Reference~~s~~:**

Section 2-613.

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Consumer lease". Section 2A-103(1)(e).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Fault". Section 2A-103(1)(f).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Supplier". Section 2A-103(1)(x).

PART 3

**EFFECT OF LEASE CONTRACT**

**Section 2A-301. Enforceability of Lease Contract**

* * *

**Official Comment**

* * *

**Cross References:**

~~Article 1, especially~~ Sections ~~1-201(37)~~1-203, ~~and Sections~~ 2-104(1), 2A-103(1)(j), 2A-103(1)(*l*), 2A-103(1)(n), 2A-103(1)(*o*) ~~and 2A-103(1)(w)~~, 2A-103(3), 2A-103(4), 2A-201, 2A-211(1), 2A-301 through 2A-303, 2A-303(2), 2A-303(5), 2A-304 through 2A-307, 2A-307(1), 2A-307(2)(a), 2A-308 through 2A-311, 2A-508, 2A-511(4), 2A-523, ~~Article 9, especially Sections~~ 9-201, and 9-505.

**Definitional Cross References:**

"Creditor". Section ~~1-201(12)~~1-201(b)(13).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Purchaser". Section ~~1-201(33)~~1-201(b)(30).
"Term". Section ~~1-201(42)~~1-201(b)(40).

**Section 2A-302. Title to and Possession of Goods**

* * *

**Official Comment**

* * *

**Purposes:**

The separation of ownership and possession of goods between the lessor and the lessee (or a third party) has created problems under certain fraudulent conveyance statutes. *See, e.g.*, *In re Ludlum Enters.*, 510 F.2d 996 (5th Cir. 1975); *Suburbia Fed. Sav. & Loan Ass'n v. Bel-Air Conditioning Co.,* 385 So. 2d 1151 (Fla. Dist. Ct. App. 1980). This section provides, among other things, that separation of ownership and possession *per se* does not affect the enforceability of the lease contract. Sections 2A-301 and 2A-308.

**Cross References:**

Sections 2A-301, 2A-308, and 9-202.

* * *

**Section 2A-303. Alienability of Party's Interest Under Lease Contract or of Lessor's Residual Interest in Goods; Delegation of Performance; Transfer of Rights**

* * *

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

6. Subsection (4) implements the rule of subsection (2). Subsection (2) provides that, even though a transfer is effective, a provision in the lease agreement prohibiting it or making it an event of default may be enforceable as provided in subsection (4). See ~~*Brummond*~~ *Brummund v. First* ~~*National*~~ *Nat'l Bank of Clovis*, 656 P.2d 884~~, 35 U.C.C.Rep.Serv. (Callaghan) 1311~~ (N.M~~ex.~~ 1983), stating the analogous rule for former Section 9-311 (now Section 9-401). If the transfer prohibited by the lease agreement is made an event of default, then, under subsection 4(a), unless the default is waived or there is an agreement otherwise, the aggrieved party has the rights and remedies referred to in Section 2A-501(2), viz. those in this Article and, except as limited in the Article, those provided in the lease agreement. In the unlikely circumstance that the lease agreement prohibits the transfer without making a violation of the prohibition an event of default or, even if there is no prohibition against the transfer, and the transfer is one that materially impairs performance, changes duties, or increases risk (for example, a sublease or assignment to a party using the goods improperly or for an illegal purpose), then subsection 4(b) is applicable. In that circumstance, unless the party aggrieved by the transfer has otherwise agreed in the lease contract, such as by assenting to a particular transfer or to transfers in general, or agrees in some other manner, the aggrieved party has the right to recover damages from the transferor and a court may, in appropriate circumstances, grant other relief, such as cancellation of the lease contract or an injunction against the transfer.

* * *

9. Subsection (5) is taken almost verbatim from the provisions of Section 2-210(5). The subsection states a rule of construction that distinguishes a commercial assignment, which substitutes the assignee for the assignor as to rights and duties, and an assignment for security or financing assignment, which substitutes the assignee for the assignor only as to rights. Note that the assignment for security or financing assignment is a subset of all security interests. Security interest is defined to include "any interest of a buyer of chattel paper". Section ~~1-201(37)~~

1-201(b)(35). Chattel paper is defined to include ~~a lease~~the right to payment arising under certain leases of specific goods. Section 9-102(a)(11). Thus, a buyer of the lessor's rights under such leases is the holder of a security interest in the leases. That conclusion should not influence this issue, as the policy is quite different. Whether a buyer of the lessor's right to payment under leases of goods is the holder of a commercial assignment, or an assignment for security or financing assignment should be determined by the language of the assignment or the circumstances of the assignment.

* * *

**Cross References:**

Sections ~~1-201(11)~~1-201(b)(10), ~~1-201(37)~~1-201(b)(35), 2-210, ~~2A-401,~~ 2A-501(2), 9-102(a)(11), 9-109(a)(3), 9-401, 9-406, and 9-407.

**Definitional Cross References:**

~~"Agreed" and~~ "Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Conspicuous". Section ~~1-201(10)~~1-201(b)(10).
"Consumer lease". Section 2A-103(1)(e).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Lessor's residual interest". Section 2A-103(1)(q).
"Notice". Section ~~1-201(25)~~1-202(a).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Term". Section ~~1-201(42)~~1-201(b)(40).
"Writing". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-304. Subsequent Lease of Goods by Lessor**

* * *

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

7. Subsection (3) states a rule with respect to a transfer of goods from a lessor to a subsequent lessee where the goods are subject to an existing lease and covered by a certificate of title. The subsequent lessee's rights are no greater than those provided by this section and the applicable certificate of title statute, including any applicable case law construing such statute. Where the relationship between the certificate of title statute and Section 2-403, the statutory analogue to this section, has been construed by a court, that construction is incorporated here. Sections 2A-103(4) and ~~1-102(1) and (2)~~1-103. The better rule is that the certificate of title statutes are in harmony with Section 2-403 and thus would be in harmony with this section. *E.g.*, *Atwood Chevrolet-Olds v. Aberdeen Mun. School Dist.*, 431 So. 2d 926, 928 (Miss. 1983); *Godfrey v. Gilsdorf*, 476 P.2d 3, 6~~, 86 Nev. 714, 718~~ (Nev. 1970); *Martin v. Nager*, ~~192 N.J.Super. 189, 197-98,~~ 469 A.2d 519, 523 (N.J. Super. Ct. Ch. Div. 1983). Where the certificate of title statute is silent on this issue of transfer, this section will control.

**Cross References:**

Sections ~~1-102,~~ 1-103, ~~1-201(33)~~1-201(b)(9), (13), (30), 2-403, 2A-103(1)(q), (v), 2A-103(3), ~~2A-103~~(4), 2A-303 ~~and~~ 2A-305, 2A-527(4), and 2A-307(2).

**Definitional Cross References:**

"Agree~~d~~ment". Section ~~1-201(3)~~1-201(b)(3).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Entrusting". Section 2-403(3).
"Good faith". Section~~s~~ ~~1-201(19) and 2-103(1)(b)~~1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Leasehold interest". Section 2A-103(1)(m).
"Lessee". Section 2A-103(1)(n).
"Lessee in the ordinary course of business". Section 2A-103(1)(o).
"Lessor". Section 2A-103(1)(p).
"Merchant". Section 2-104(1).
"Purchase". Section 2A-103(1)(v).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-305. Sale or Sublease of Goods by Lessee**

* * *

**Official Comment**

* * *

**Purposes:**

This section, a companion to Section 2A-304, states the rule with respect to the leasehold interest obtained by a buyer or sublessee from a lessee of goods under an existing lease contract. *Cf.* Section 2A-304 ~~official comment~~Comment. Note that this provision is consistent with existing case law, which prohibits the bailee's transfer of title to a good faith purchaser for value under Section 2-403(1). *Rohweder v. Aberdeen Prod~~uct~~. Credit Ass'n*, 765 F.2d 109 (8th Cir. 1985).

Subsection (2) is also consistent with existing case law. *American Standard Credit, Inc. v. National Cement Co.*, 643 F.2d 248, 269-70 (5th Cir. 1981); *but cf. Exxon Co., U.S.A. v. TLW Computer Indus.*, 37 U.C.C. Rep. Serv. (Callaghan) 1052, 1057-58 (D. Mass. 1983). Unlike Section 2A-304(2), this subsection does not contain any requirement with respect to the time that the goods were entrusted to the merchant. In Section 2A-304(2) the competition is between two customers of the merchant lessor; the time of entrusting was added as a criterion to create additional protection to the customer who was first in time: the existing lessee. In subsection (2) the equities between the competing interests were viewed as balanced.

* * *

Subsection (3) states a rule of construction with respect to a transfer of goods from a lessee to a buyer or sublessee, where the goods are subject to an existing lease and covered by a certificate of title. *Cf.* Section 2A-304 ~~official comment~~Comment.

**Cross References:**

Sections 2-403, 2A-103(1)(a), 2A-304, and ~~2A-305(2)~~2A-511(4).

**Definitional Cross References:**

"Buyer". Section 2-103(1)(a).
"Buyer in the ordinary course of business". Section 2A-103(1)(a).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Entrusting". Section 2-403(3).
"Good faith". Section~~s~~ ~~1-201(19) and 2-103(1)(b)~~1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Leasehold interest." Section 2A-103(1)(m).
"Lessee". Section 2A-103(1)(n).
"Lessee in the ordinary course of business". Section 2A-103(1)(o).
"Lessor". Section 2A-103(1)(p).
"Merchant". Section 2-104(1).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Sale". Section 2-106(1).
"Sublease". Section 2A-103(1)(w).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-306. Priority of Certain Liens Arising by Operation of Law**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Lien". Section 2A-103(1)(r).
"Person". Section ~~1-201(30)~~1-201(b)(27).

**Section 2A-307. Priority of Liens Arising by Attachment or Levy on, Security Interests in, and Other Claims to Goods**

* * *

(3) Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

2. Subsection (2) states a general rule of priority that a creditor of a lessor takes subject to the lease contract. Note the discussion above with regard to the scope of these rules. Section 2A-301 ~~official comment~~Comment 3(g). Thus, the section will not only cover disputes between the prime lessee and a creditor of the prime lessor but also disputes between the prime lessee, or the sublessee, and a creditor of the sublessor.

* * *

**Cross References:**

Sections ~~1-201(12)~~1-201(b)(13), ~~1-201(25), 1-201(37), 1-201(44),~~ 2A-103(1)(n), ~~2A-103(1)(*o*),~~ 2A-103(1)(r), 2A-103(4), 2A-201(1)(b), ~~2A-301 official comment 3(g),~~ 2A-306, 2A-308, ~~Article 9, especially Sections~~ 9-317, 9-321, and 9-323.

**Definitional Cross References:**

"Creditor". Section ~~1-201(12)~~1-201(b)(13).
"Goods". Section 2A-103(1)(h).
"Knowledge" and "Knows". Section ~~1-201(25)~~1-202(b).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Leasehold interest". Section 2A-103(1)(m).
"Lessee". Section 2A-103(1)(n).
"Lessee in the ordinary course of business". Section 2A-103(1)(o).
"Lessor". Section 2A-103(1)(p).
"Lien". Section 2A-103(1)(r).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Pursuant to commitment". Section 2A-103(3).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).

**Section 2A-308. Special Rights of Creditors**

* * *

**Official Comment**

* * *

**Cross References:**

Sections ~~1-201(19)~~1-201(b)(20), ~~1-201(44)~~1-204, 2-402(2), 2-402(3)(b), and 2A-103(3) and (4).

**Definitional Cross References:**

"Buyer". Section 2-103(1)(a).
"Contract". Section ~~1-201(11)~~1-201(b)(12).
"Creditor". Section ~~1-201(12)~~1-201(b)(13).
"Good faith". Section~~s 1-201(19) and 2-103(1)(b)~~ 1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Money". Section 1-201(b)(24).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Sale". Section 2-106(1).
"Seller". Section 2-103(1)(d).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-309. Lessor's and Lessee's Rights When Goods Become Fixtures**

* * *

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

~~*As amended in 1990.*~~

**Official Comment**

**Uniform Statutory Source:** Former Section 9-313 (now codified as Sections 9-334 and 9-604).

* * *

**Purposes:**

1. While ~~Former~~ former Section 9-313 (now codified as Sections 9-334 and 9-604) provided a model for this section, certain provisions were substantially revised.

* * *

6. ~~Finally, s~~Subsection (9) provides a mechanism for the lessor of fixtures to perfect its interest by filing a financing statement under the provisions of the Article on Secured Transactions (Article 9), even though the lease agreement does not create a security interest. Section 1-203. The relevant provisions of Article 9 must be interpreted permissively to give effect to this mechanism as it implicitly expands the scope of Article 9 so that its filing provisions apply to transactions that create a lease of fixtures, even though the lease agreement does not create a security interest.

* * *

**Cross References:**

Sections ~~1-201(37),~~ 2A-309(1)(c), 2A-309(4), ~~Article 9, especially Sections~~ 9-334, 9-502(a), and (b), 9-604 and 9-505.

**Definitional Cross References:**

"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Cancellation". Section 2A-103(1)(b).
"Conforming". Section 2A-103(1)(d).
"Consumer lease". Section 2A-103(1)(e).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).

"Lessor". Section 2A-103(1)(p).
"Lien". Section 2A-103(1)(r).
"Mortgage". Section 9-102(a)(55).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).
"Termination". Section 2A-103(1)(z).
"Value". Section ~~1-201(44)~~1-204.
"Writing". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-310. Lessor's and Lessee's Rights When Goods Become Accessions**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2A-309(8)~~, 9-102(a)(1),~~ and 9-335.

**Definitional Cross References:**

"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Buyer in the ordinary course of business". Section 2A-103(1)(a).
"Cancellation". Section 2A-103(1)(b).
"Creditor". Section ~~1-201(12)~~1-201(b)(13).
"Goods". Section 2A-103(1)(h).
"Holder". Section ~~1-201(20)~~1-201(b)(21).
"Knowledge". Section ~~1-201(25)~~1-202(b).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessee in the ordinary course of business". Section 2A-103(1)(o).
"Lessor". Section 2A-103(1)(p).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).
"Termination". Section 2A-103(1)(z).
"Value". Section ~~1-201(44)~~1-204.
"Writing". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-311. Priority Subject to Subordination**

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

~~*As added in 1990.*~~

**Official Comment**

* * *

**Cross Reference~~s~~:**

~~Sections 1-102 and 2A-304 through 2A-310~~Section 1-310.

**Definitional Cross References:**

"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Person". Section ~~1-201(30)~~1-201(b)(27).

PART 4

**PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED**

**Section 2A-401. Insecurity: Adequate Assurance of Performance**

* * *

**Official Comment**

* * *

**Cross Reference:**

Section 2-609(4).

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Between merchants". Section 2-104(3).
"Conforming". Section 2A-103(1)(d).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Lease contract". Section 2A-103(1)(*l* ).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Receipt". Section 2-103(1)(c).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Writing". Section ~~1-201(46)~~1-201(b)(43).

### Section 2A-402. Anticipatory Repudiation

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2A-401 and 2A-524.

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessor". Section 2A-103(1)(p).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Value". Section ~~1-201(44)~~1-204.

### Section 2A-403. Retraction of Anticipatory Repudiation

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-611(2) and 2A-401.

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Cancellation". Section 2A-103(1)(b).
"Lease contract". Section 2A-103(1)(*l* ).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).

### Section 2A-404. Substituted Performance

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Fault". Section 2A-103(1)(f).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Supplier". Section 2A-103(1)(x).

**Section 2A-405. Excused Performance**

* * *

**Official Comment**

* * *

**Cross Reference:**

Section 2A-404.

**Definitional Cross References:**

"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Contract". Section ~~1-201(11)~~1-201(b)(12).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Finance lease". Section 2A-103(1)(g).
"Good faith". Section~~s 1- 201(19) and 2-103(1)(b)~~1-201(b)(20).
"Knows". Section ~~1-201(25)~~1-202(b).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Sale". Section 2-106(1).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Supplier". Section 2A-103(1)(x).

**Section 2A-406. Procedure on Excused Performance**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2A-404, 2A-405, 2A-407.

**Definitional Cross References:**

"Consumer lease". Section 2A-103(1)(e).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Installment lease contract". Section 2A-103(1)(i).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notice". Section ~~1-201(25)~~1-202(a).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Receipt". Section 2-103(1)(c).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Termination". Section 2A-103(1)(z).
"Value". Section ~~1-201(44)~~1-204.
"Written". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-407. Irrevocable Promises: Finance Leases**

* * *

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

1. This section extends the benefits of the classic "hell or high water" clause to a finance lease that is not a consumer lease. This section is self-executing; no special provision need be added to the contract. This section makes covenants in a finance lease irrevocable and independent due to the function of the finance lessor in a ~~three party~~ three-party relationship: the lessee is looking to the supplier to perform the essential covenants and warranties. Section 2A-209. Thus, upon the lessee's acceptance of the goods the lessee's promises to the lessor under the lease contract become irrevocable and independent. The provisions of this section remain subject to the obligation of good faith (Sections 2A-103(4) and ~~1-203~~1-304), and the

lessee's revocation of acceptance (Section 2A-517).

2. The section requires the lessee to perform even if the lessor's performance after the lessee's acceptance is not in accordance with the lease contract; the lessee may, however, have and pursue a cause of action against the lessor, e.g., breach of certain limited warranties (Sections 2A-210 and 2A-211(1)). This is appropriate because the benefit of the supplier's promises and warranties to the lessor under the supply contract and, in some cases, the warranty of a manufacturer who is not the supplier, is extended to the lessee under the finance lease. Section 2A-209. Despite this balance, this section excludes a finance lease that is a consumer lease. That a consumer be obligated to pay notwithstanding defective goods or the like is a principle that is not tenable under case law (*Unico v. Owen*, ~~50 N.J. 101,~~ 232 A.2d 405 (N.J. 1967)), state statute (Unif. Consumer Credit Code §§ 3.403–3.405~~, 7A U.L.A. 126-31 (1974)~~, or federal statute (15 U.S.C. § 1666i (1982)).

* * *

6. This section does not address whether a "hell or high water" clause, *i.e.*, a clause that is to the effect of this section, is enforceable if included in a finance lease that is a consumer lease or a lease that is not a finance lease. That issue will continue to be determined by the facts of each case and other law which this section does not affect. Sections 2A-104, 2A-103(4), 9-403 and 9-404. However, with respect to finance leases that are not consumer leases courts have enforced "hell or high water" clauses. *In re O.P.M. Leasing Servs.*, 21 ~~Bankr.~~B.R. 993, 1006 (Bankr. S.D.N.Y. 1982).

* * *

**Cross References:**

Sections 1-103, ~~1-203~~1-304, 2A-103(1)(g), 2A-103(1)(j), 2A-103(4), 2A-104, 2A-209, ~~2A-209(1),~~ 2A-210, 2A-211(1), 2A-212(1), 2A-213, 2A-407(1), 2A-508(6), 2A-517~~(1)(b)~~, 9-403, and 9-404.

**Definitional Cross References:**

"Cancellation". Section 2A-103(1)(b).
"Consumer lease". Section 2A-103(1)(e).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Termination". Section 2A-103(1)(z).

PART 5

**DEFAULT**

A. IN GENERAL

**Section 2A-501. Default: Procedure**

* * *

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

~~*As amended in 1990.*~~

**Official Comment**

* * *

4. Subsection (4) establishes that the parties' rights and remedies are cumulative. Ronald M. DeKoven, *Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision*, 12 U.S.F. L. Rev. 257, 276-80 (1978). Cumulation, and largely unrestricted selection, of remedies is allowed in furtherance of the general policy of the Commercial Code, stated in Section 1-305, that remedies be liberally administered to put the aggrieved party in as good a position as if the other party had fully performed. Therefore, cumulation of, or selection among, remedies is available to the extent necessary to put the aggrieved party in as good a position as it would have been in had there been full performance. However, cumulation of, or selection among, remedies is not available to the extent that the cumulation or selection would put the aggrieved party in a better position than it would have been in had there been full performance by the other party.

* * *

**Cross References:**

Sections 1-305, 2A-508, 2A-523, ~~Article 9, especially Sections~~ 9-601, and 9-602.

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section 1-201(b)(26).
"Remedy". Section 1-201(b)(32).
"Right~~s~~". Section 1-201(b)(34).

**Section 2A-502. Notice After Default**

* * *

**Official Comment**

* * *

**Purposes:**

This section makes clear that absent agreement to the contrary or provision in this Article to the contrary, *e.g.*, Section 2A-516(3)(a), the party in default is not entitled to notice of default or enforcement. While a review of Part 5 of Article 9 leads to the same conclusion with respect to giving notice of default to the debtor, it is never stated. Although Article 9 requires notice of disposition and strict foreclosure, the different scheme of lessors' and lessees' rights and remedies developed under the common law, and codified by this Article, generally does not require notice of enforcement; furthermore, such notice is not mandated by due process requirements. However, certain sections of this Article do require notice. *E.g.*, Section 2A-517(4) [*].

**Cross References:**

Sections 2A-516(3)(a), 2A-517(4)[*], and Article 9, ~~esp.~~ Part 5.

**Definitional Cross References:**

"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notice". Section ~~1-201(25)~~1-202(a).
"Party". Section ~~1-201(29)~~1-201(b)(26).

[*] ~~*Previous incorrect cross reference corrected by Permanent Editorial Board action, November 1992.*~~

**Section 2A-503. Modification or Impairment of Rights and Remedies**

* * *

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

1. A significant purpose of this Part is to provide rights and remedies for those parties to a

lease who fail to provide them by agreement or whose rights and remedies fail of their essential purpose or are unenforceable. However, it is important to note that this implies no restriction on freedom to contract. Sections 2A-103(4) and ~~1-102(3)~~1-302(a). Thus, subsection (1), a revised version of the provisions of Section 2-719(1), allows the parties to the lease agreement freedom to provide for rights and remedies in addition to or in substitution for those provided in this Article and to alter or limit the measure of damages recoverable under this Article. Except to the extent otherwise provided in this Article (*e.g.*, Sections 2A-105, 106 and 108(1) and (2)), this Part shall be construed neither to restrict the parties' ability to provide for rights and remedies or to limit or alter the measure of damages by agreement, nor to imply disapproval of rights and remedy schemes other than those set forth in this Part.

2. Subsection (2) makes explicit with respect to this Article what is implicit in Section 2-719 with respect to the Article on Sales (Article 2): if an exclusive remedy is held to be unconscionable, remedies under this Article are available. Section 2-719 ~~official comment~~Comment 1.

* * *

**Cross References:**

Sections ~~1-102(3),~~ 1-103, 1-302(a), ~~Article 2, especially Sections~~ 2-701, 2-719, ~~2-719(1), 2-719(3), 2-719 official comment 1, and Sections~~ 2A-103(4), 2A-105, 2A-106, 2A-108(1), 2A-108(2), and 2A-504.

**Definitional Cross References:**

"~~Agreed~~Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Consumer goods". Section 9-102(a)(23).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l*).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).

**Section 2A-504. Liquidation of Damages**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

A liquidated damages formula that is common in leasing practice provides that the sum of

lease payments past due, accelerated future lease payments, and the lessor's estimated residual interest, less the net proceeds of disposition (whether by sale or re-lease) of the leased goods is the lessor's damages. Tax indemnities, costs, interest and attorney's fees are also added to determine the lessor's damages. Another common liquidated damages formula utilizes a periodic depreciation allocation as a credit to the aforesaid amount in mitigation of a lessor's damages. A third formula provides for a fixed number of periodic payments as a means of liquidating damages. Stipulated loss or stipulated damage schedules are also common. Whether these formulae are enforceable will be determined in the context of each case by applying a standard of reasonableness in light of the harm anticipated when the formula was agreed to. Whether the inclusion of these formulae will affect the classification of the transaction as a lease or a security interest is to be determined by the facts of each case. Section 1-203. *E.g.*, *In re Noack*, 44 ~~Bankr.~~ B.R.172, 174-75 (Bankr. E.D. Wis. 1984).

This section does not incorporate two other tests that under sales law determine enforceability of liquidated damages, *i.e.*, difficulties of proof of loss and inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The ability to liquidate damages is critical to modern leasing practice; given the parties' freedom to contract at common law, the policy behind retaining these two additional requirements here was thought to be outweighed. Further, given the expansion of subsection (1) to enable the parties to liquidate the amount payable with respect to an indemnity for loss or diminution of anticipated tax benefits resulted in another change: the last sentence of Section 2-718(1), providing that a term fixing unreasonably large liquidated damages is void as a penalty, was also not incorporated. The impact of local, state and federal tax laws on a leasing transaction can result in an amount payable with respect to the tax indemnity many times greater than the original purchase price of the goods. By deleting the reference to unreasonably large liquidated damages the parties are free to negotiate a formula, restrained by the rule of reasonableness in this section. These changes should invite the parties to liquidate damages. Ellen A. Peters, *Remedies for Breach of Contracts Relating to the Sale of Goods Under the Uniform Commercial Code: A Roadmap for Article Two*, 73 Yale L.J. 199, 278 (1963).

* * *

**Cross References:**

Sections ~~1-201(37)~~1-203, 2-718, ~~2-718(1), 2-718(2)(b) and~~ 2-719(2), 2A-525, and 2A-526.

**Definitional Cross References:**

"Consumer lease". Section 2A-103(1)(e).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Insolvent". Section ~~1-201(23)~~1-201(b)(23).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Lessor's residual interest". Section 2A-103(1)(q).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Present value". Section ~~2A-103(1)(u)~~1-201(b)(28).

"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Term". Section ~~1-201(42)~~1-201(b)(40).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-505. Cancellation and Termination and Effect of Cancellation, Termination, Rescission, or Fraud on Rights and Remedies**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Cancellation". Section 2A-103(1)(b).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l*).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Termination". Section 2A-103(1)(z).

**Section 2A-506. Statute of Limitations**

* * *

**Official Comment**

* * *

**Cross References:**

Section~~s~~ 2-725(1) and ~~2-725~~(2).

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Lease contract". Section 2A-103(1)(*l* ).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Termination". Section 2A-103(1)(z).

**Section 2A-507. Proof of Market Rent: Time and Place**

* * *

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Cross References:**

Sections 2A-519 and 2A-528.

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Notice". Section ~~1-201(25)~~1-202(a).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Usage of trade". Section ~~1-205~~1-303(c).
"Value". Section ~~1-201(44)~~1-204.

**B. DEFAULT BY LESSOR**

**Section 2A-508. Lessee's Remedies**

* * *

(6) Subject to the provisions of Section 2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

1. This section is an index to Sections 2A-509 through 522 which set out the lessee's rights and remedies after the lessor's default. The lessor and the lessee can agree to modify the rights and remedies available under this Article; they can, among other things, provide that for defaults other than those specified in subsection (1) the lessee can exercise the rights and remedies referred to in subsection (1); and they can create a new scheme of rights and remedies triggered by the occurrence of the default. Sections 2A-103(4) and ~~1-102(3)~~1-302(a).

2. Subsection (1), a substantially rewritten version of the provisions of Section 2-711(1), lists three cumulative remedies of the lessee where the lessor has failed to deliver conforming goods or has repudiated the contract, or the lessee has rightfully rejected or justifiably revoked. Sections 2A-501(2) and (4). Subsection (1) also allows the lessee to exercise any contractual remedy. This Article rejects any general doctrine of election of remedy. To determine if one remedy bars another in a particular case is a function of whether the lessee has been put in as good a position as if the lessor had fully performed the lease agreement. Use of multiple remedies is barred only if the effect is to put the lessee in a better position than it would have been in had the lessor fully performed under the lease. Sections 2A-103(4), 2A-501(4), and ~~1-106(1)~~1-305(a). Subsection (1)(b), in recognition that no bright line can be created that would operate fairly in all installment lease cases and in recognition of the fact that a lessee may be able to cancel the lease (revoke acceptance of the goods) after the goods have been in use for some period of time, does not require that all lease payments made by the lessee under the lease be returned upon cancellation. Rather, only such portion as is just of the rent and security payments made may be recovered. If a defect in the goods is discovered immediately upon tender to the lessee and the goods are rejected immediately, then the lessee should recover all payments made. If, however, for example, a 36-month equipment lease is terminated in the 12th month because the lessor has materially breached the contract by failing to perform its maintenance obligations, it may be just to return only a small part or none of the rental payments already made.

* * *

9. Subsection (6), a slightly revised version of the provisions of Section 2-717, sanctions a right of set-off by the lessee, subject to the rule of Section 2A-407 with respect to irrevocable promises in a finance lease that is not a consumer lease, and further subject to an enforceable "hell or high water" clause in the lease agreement. Section 2A-407 ~~official comment~~Comment. No attempt is made to state how the set-off should occur; this is to be determined by the facts of each case.

* * *

**Cross References:**

Sections ~~1-102(3), 1-103, 1-106(1)~~1-302(a), 1-305(a), ~~Article 2, especially Sections~~ 2-711, 2-717, ~~and Sections~~ 2A-103(4), 2A-209, 2A-210, 2A-211(1), 2A-402, 2A-407, 2A-501(2), 2A-501(4), 2A-509 through 2A-522, ~~2A-511(3), 2A-517(5),~~ 2A-527~~(5),~~ and ~~Section~~ 9-110.

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Consumer lease". Section 2A-103(1)(e).

"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Good faith". Section~~s~~ ~~1-201(19) and 2-103(1)(b)~~1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Installment lease contract". Section 2A-103(1)(i).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Receipt". Section 2-103(1)(c).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-509. Lessee's Rights on Improper Delivery; Rightful Rejection**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Commercial unit". Section 2A-103(1)(c).
"Conforming". Section 2A-103(1)(d).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Installment lease contract". Section 2A-103(1)(i).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Seasonably". Section ~~1-204(3)~~1-205(b).

**Section 2A-510. Installment Lease Contracts: Rejection and Default**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).

"Cancellation". Section 2A-103(1)(b).
"Conforming". Section 2A-103(1)(d).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Installment lease contract". Section 2A-103(1)(i).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Supplier". Section 2A-103(1)(x).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-511. Merchant Lessee's Duties as to Rightfully Rejected Goods**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2A-508(5) and 2A-512.

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Good faith". Section~~s 1-201(19) and 2-103(1)(b)~~1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Merchant lessee". Section 2A-103(1)(t).
"Purchaser". Section ~~1-201(33)~~1-201(b)(30).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).
"Supplier". Section 2A-103(1)(x).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-512. Lessee's Duties as to Rightfully Rejected Goods**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-602(2)(b), 2-602(2)(c), ~~and~~ 2-604 2A-508(5), and 2A-511.

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notification". Section ~~1-201(26)~~1-202(d).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).
"Supplier". Section 2A-103(1)(x).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-513. Cure by Lessor of Improper Tender or Delivery; Replacement**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Money". Section 1-201(24).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Supplier". Section 2A-103(1)(x).

**Section 2A-514. Waiver of Lessee's Objections**

* * *

**Official Comment**

* * *

**Purposes:**

1. The principles applicable to the commercial practice of payment against documents (subsection 2) are explained in ~~official comment 4 to~~ Section 2-605 Comment 4, the statutory analogue to this section.

* * *

**Cross Reference:**

~~Section 2-605 official comment 4~~Section 2A-513.

**Definitional Cross References:**

"Between merchants". Section 2-104(3).
"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Supplier". Section 2A-103(1)(x).
"Writing". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-515. Acceptance of Goods**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 2-606(1)(a), ~~and~~ 2-606(1)(c), and 2A-509(2).

* * *

**Section 2A-516. Effect of Acceptance of Goods; Notice of Default; Burden of Establishing Default After Acceptance; Notice of Claim or Litigation to Person Answerable Over**

* * *

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A-211).

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

1. Subsection (2) creates a special rule for finance leases, precluding revocation if

acceptance is made with knowledge of nonconformity with respect to the lease agreement, as opposed to the supply agreement; this is not inequitable as the lessee has a direct claim against the supplier. Section 2A-209(1). Revocation of acceptance of a finance lease is permitted if the lessee's acceptance was without discovery of the nonconformity (with respect to the lease agreement, not the supply agreement) and was reasonably induced by the lessor's assurances. Section 2A-517(1)(b). Absent exclusion or modification, the lessor under a finance lease makes certain warranties to the lessee. Sections 2A-210 and 2A-211(1). Revocation of acceptance is not prohibited even after the lessee's promise has become irrevocable and independent. Section 2A-407 ~~official comment~~Comment. Where the finance lease creates a security interest, the rule may be to the contrary. *General Elec. Credit Corp. of Tennessee v. Ger-Beck Mach. Co.*, 806 F.2d 1207 (~~3rd~~3d Cir. 1986).

* * *

**Cross References:**

Sections 2-607(3)(b), 2A-103(1)(x), 2A-209(1), 2A-210, 2A-211(1), 2A-211(2), ~~2A-407 official comment~~ and 2A-517(1)(b).

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Agreement". Section ~~1-201(3)~~1-201(b)(3).
"Burden of establishing". Section ~~1-201(8)~~1-201(b)(8).
"Conforming". Section 2A-103(1)(d).
"Consumer lease". Section 2A-103(1)(e).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Discover". Section ~~1-201(25)~~1-202(c).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Knowledge". Section ~~1-201(25)~~1-202(b).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notice". Section ~~1-201(25)~~1-202(a).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Receipt". Section 2-103(1)(c).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Supplier". Section 2A-103(1)(x).
"Written". Section ~~1-201(46)~~1-201(b)(43).

**Section 2A-517. Revocation of Acceptance of Goods**

* * *

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

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Changes:**

Revised to reflect leasing practices and terminology. Note that in the case of a finance lease the lessee retains a limited right to revoke acceptance. Sections 2A-517(1)(b) and 2A-516 ~~official comment~~Comment. New subsections (2) and (3) added.

* * *

~~**Cross Reference:**~~

~~Section 2A-516 official comment.~~

**Definitional Cross References:**

"Commercial unit". Section 2A-103(1)(c).
"Conforming". Section 2A-103(1)(d).
"Consumer lease". Section 2A-103(1)(e).
"Discover". Section ~~1-201(25)~~1-202(c).
"Finance lease". Section 2A-103(1)(g).
"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Lot". Section 2A-103(1)(s).
"Notifies". Section ~~1-201(26)~~1-202(d).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Seasonably". Section ~~1-204(3)~~1-205(b).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-518. Cover; Substitute Goods**

* * *

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A-519 governs.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Cross References:**

Sections 1-302, 2-712(1), 2A-503, 2A-504, 2A-508(1), 2A-519, 9-625 and 9-627.

**Definitional Cross References:**

"Agreement". Section 1-201(b)(3).
"Contract". Section 1-201(b)(12).
"Good faith". Section ~~1-201(20)~~1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section 1-201(b)(26).
"Present value". Section 1-201(b)(28).
"Purchase". Sections 1-201(b)(29) and 2A-103(1)(v).

**Section 2A-519. Lessee's Damages for Non-delivery, Repudiation, Default, and Breach of Warranty in Regard to Accepted Goods**

* * *

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Cross References:**

Sections 2-713(1), 2-713(2), 2-714, ~~and Section~~ 2A-103(4), 2A-501(1), 2A-503, 2A-504, 2A-516(3), and 2A-518.

**Section 2A-520. Lessee's Incidental and Consequential Damages**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Goods". Section 2A-103(1)(h).
"Knows". Section ~~1-201(25)~~1-202(b).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Receipt". Section 2-103(1)(c).

**Section 2A-521. Lessee's Right to Specific Performance or Replevin**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Term". Section ~~1-201(42)~~1-201(b)(40).

**Section 2A-522. Lessee's Right to Goods on Lessor's Insolvency**

* * *

**Official Comment**

* * *

**Cross Reference:**

Section 2A-217.

**Definitional Cross References:**

"Conforming". Section 2A-103(1)(d).
"Goods". Section 2A-103(1)(h).
"Insolvent". Section ~~1-201(23)~~1-201(b)(23).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Receipt". Section 2-103(1)(c).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).

## C. DEFAULT BY LESSEE

### Section 2A-523. Lessor's Remedies

* * *

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

* * *

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

~~*As amended in 1990.*~~

**Official Comment**

* * *

2. The lessor and the lessee can agree to modify the rights and remedies available under the Article; they can, among other things, provide that for defaults other than those specified in subsection (1) the lessor can exercise the rights and remedies referred to in subsection (1), whether or not the default would otherwise be held to substantially impair the value of the lease contract to the lessor; they can also create a new scheme of rights and remedies triggered by the occurrence of the default. Sections 2A-103(4) and ~~1-102(3)~~1-302(a).

* * *

4. This Article rejects any general doctrine of election of remedy. Whether, in a particular case, one remedy bars another, is a function of whether lessor has been put in as good a position

as if the lessee had fully performed the lease contract. Multiple remedies are barred only if the effect is to put the lessor in a better position than it would have been in had the lessee fully performed under the lease. Sections 2A-103(4), 2A-501(4), and ~~1-106(1)~~1-305(a).

* * *

20. Subsection (3) allows the lessor access to a remedy scheme provided in this Article as well as that contained in the lease contract if the lessee is in default for reasons other than those stated in subsection (1). Note that the reference to this Article includes supplementary principles of law and equity, *e.g.*, fraud, misrepresentation and duress. Sections 2A-103(4) and ~~1-103~~1-103(b).

21. There is no special treatment of the finance lease in this section. Absent supplementary principles of law to the contrary, in most cases the supplier will have no rights or remedies against the defaulting lessee. Section 2A-209(2)(ii). Given that the supplier will look to the lessor for payment, this is appropriate. However, there is a specific exception to this rule with respect to the right to identify goods to the lease contract. Section 2A-524(2). The parties are free to create a different result in a particular case. Sections 2A-103(4) and ~~1-102(3)~~1-302(a).

**Cross References:**

Sections ~~1-102(3),~~ 1-103(b), ~~1-106(1), 1-201(37)~~1-203, 1-302(a), 1-305(a), 2-703, 2A-103(1)(j), 2A-103(4), 2A-209(2)(ii), 2A-501(2), 2A-501(4), 2A-504(1), 2A-505(1), 2A-507, 2A-510~~(2)~~, 2A-523(2), and 2A-524 through 2A-531~~, 2A-524(2), 2A-525(1), 2A-525(2), 2A-526(1), 2A-527(1), 2A-527(2), 2A-528(1) and 2A-529(3)~~.

**Definitional Cross References:**

"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Installment lease contract". Section 2A-103(1)(i).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-524. Lessor's Right to Identify Goods to Lease Contract**

* * *

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or

proceed in any other reasonable manner.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Cross References:**

Sections 2A-523(1), 2A-523(3)(a), and 2A-527(1).

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Conforming". Section 2A-103(1)(d).
"Goods". Section 2A-103(1)(h).
"Learn". Section ~~1-201(25)~~1-202(c).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessor". Section 2A-103(1)(p).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Supplier". Section 2A-103(1)(x).
"Value". Section ~~1-201(44)~~1-204.

**Section 2A-525. Lessor's Right to Possession of Goods**

* * *

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

3. Subsection (3), a revised version of the provisions of former Section 9-503 (now codified as Section 9-609), allows the lessor to proceed under subsection (2) without judicial process, absent breach of the peace, or by action. Sections 2A-501(3), 2A-103(4) and ~~1-201(1)~~1-201(b)(1). In the appropriate case action includes injunctive relief. *Clark Equip. Co. v. Armstrong Equip. Co.*, 431 F.2d 54 (5th Cir.1970), *cert. denied,* 402 U.S. 909 (1971). This

Section, as well as a number of other Sections in this Part, are included in the Article to codify the lessor's common law right to protect the lessor's reversionary interest in the goods. Section 2A-103(1)(q). These Sections are intended to supplement and not displace principles of law and equity with respect to the protection of such interest. Sections 2A-103(4) and 1-103. Such principles apply in many instances, *e.g.,* loss or damage to goods if risk of loss passes to the lessee, failure of the lessee to return goods to the lessor in the condition stipulated in the lease, and refusal of the lessee to return goods to the lessor after termination or cancellation of the lease. See also Section 2A-532.

**Cross References:**

Sections ~~1-106(2)~~1-103, 1-201(b)(1), 2-702(1), 2-702(2), 2A-103(1)(q), 2A-103(4), 2A-501(3), 2A-523(1), 2A-523(3)(a), 2A-527, 2A-532, and 9-609.

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Discover". Section ~~1-201(25)~~1-202(c).
"Goods". Section 2A-103(1)(h).
"Insolvent". Section ~~1-201(23)~~1-201(b)(23).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).

**Section 2A-526. Lessor's Stoppage of Delivery in Transit or Otherwise**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Bill of lading". Section ~~1-201(6)~~1-201(b)(6).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Discover". Section ~~1-201(25)~~1-202(c).
"Goods". Section 2A-103(1)(h).
"Insolvent". Section ~~1-201(23)~~1-201(b)(23).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Notifies" and "Notification". Section ~~1-201(26)~~1-202(d).
"Person". Section ~~1-201(30)~~1-201(b)(27).
"Receipt". Section 2-103(1)(c).
"Remedy". Section ~~1-201(34)~~1-201(b)(32).

"Rights". Section 1-201(36)1-201(b)(34).

**Section 2A-527. Lessor's Rights to Dispose of Goods**

* * *

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Section 2A-508(5)).

*As amended in 1990.*

**Official Comment**

* * *

**Cross References:**

Sections 1-302, 2-706(1), 2-706(5), 2-706(6), 2A-103(4), 2A-304(1), 2A-503, 2A-504, 2A-507(2), 2A-523(1)(e), 2A-523(3)(a), 2A-525(2), 2A-526, 2A-527(5), 2A-528, 2A-530, 9-625, and 9-627.

**Definitional Cross References:**

"Buyer" and "Buying". Section 2-103(1)(a).
"Delivery". Section 1-201(b)(15).
"Good faith". Section 1-201(b)(20).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Present value". Section 1-201(b)(28).
"Rights". Section 1-201(b)(34).
"Sale". Section 2-106(1).
"Security interest". Sections 1-201(b)(35) and 1-203.
"Value". Section 1-201(44)1-204.

**Section 2A-528. Lessor's Damages for Non-acceptance, Failure to Pay, Repudiation, or Other Default**

* * *

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of

the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

2. If the lessee has never taken possession of the goods, the measure of damage is the accrued and unpaid rent as of the date of default together with the present value, as of the date of default, of the original rent for the remaining term of the lease less the present value as of the same date of market rent, and incidental damages, less expenses saved in consequence of the default. Note that the reference in Section 2A-528(1)(i) and (ii) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this Article and the lease agreement. American Bar Foundation, *Commentaries on Indentures,* § 5-1, at 216-~~2~~17 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended or cured. Sections 2A-103(4) and 1-103. If the lessee has taken possession of the goods, the measure of damages is the accrued and unpaid rent as of the earlier of the time the lessor repossesses the goods or the time the lessee tenders the goods to the lessor plus the difference between the present value, as of the same time, of the rent under the lease for the remaining lease term and the present value, as of the same time, of the market rent.

* * *

5. In calculating profit, a court should include any expected appreciation of the goods, *e.g.* the foal of a leased brood mare. Because this subsection is intended to give the lessor the benefit of the bargain, a court should consider any reasonable benefit or profit expected by the lessor from the performance of the lease agreement. *See Honeywell, Inc. v. Lithonia Lighting, Inc.*, 317 F. Supp. 406, 413 (N.D. Ga. 1970); *Locks v. Wade*, ~~36 N.J.Super. 128, 131,~~ 114 A.2d 875, 877 (N.J. Super. Ct. App. Div. 1955). Further, in calculating profit the concept of present value must be given effect. *Taylor v. Commercial Credit Equip. Corp.*, ~~170 Ga.App. 322,~~ 316 S.E.2d 788 (Ga. Ct. App. 1984). *See generally* Section 2A-103(1)(u).

**Cross References:**

Sections 1-103, 1-302, 2-708, 2A-103(1)(q), 2A-103(1)(u), ~~2A-402,~~ 2A-103(4), 2A-501(1), 2A-503, 2A-504, 2A-507, 2A-527(2), 2A-527(3), 2A-528(1), ~~and~~ 2A-529, and 2A-530.

* * *

**Section 2A-529. Lessor's Action for the Rent**

* * *

(5) After default by the lessee under the lease contract of the type described in Section 2A-523(1) or Section 2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Section 2A-527 or Section 2A-528.

~~*As amended in 1990.*~~

**Official Comment**

* * *

**Purposes:**

* * *

3. Under subsection (2) a lessor who is able and elects to sue for the rent due under a lease must hold goods not lost or damaged for the lessee. Subsection (3) creates an exception to the subsection (2) requirement. If the lessor disposes of those goods prior to collection of the judgment (whether as a matter of law or agreement), the lessor's recovery is governed by the measure of damages in Section 2A-527 if the disposition is by lease that is substantially similar to the original lease, or otherwise by the measure of damages in Section 2A-528. Section 2A-523 ~~official comment~~Comment.

* * *

5. The relationship between subsections (2) and (4) is important to understand. Subsection (2) requires the lessor to hold for the lessee identified goods in the lessor's possession. Absent agreement to the contrary, whether in the lease or otherwise, under most circumstances the requirement that the lessor hold the goods for the lessee for the term will mean that the lessor is not allowed to use them. Sections 2A-103(4) and ~~1-203~~1-304. Further, the lessor's use of the goods could be viewed as a disposition of the goods that would bar the lessor from recovery under this section, remitting the lessor to the two preceding sections for a determination of the lessor's claim for damages against the lessee.

* * *

**Cross References:**

Sections ~~1-203~~1-304, ~~2-709,~~ 2-709(3), 2A-103(4), 2A-219, 2A-501(2), 2A-501(4), 2A-503(2), 2A-504, 2A-523(1)~~(c)~~, 2A-523(3)(a), 2A-525(2), 2A-527, and 2A-528 ~~and 2A-529(2)~~.

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Conforming". Section 2A-103(1)(d).
"Goods". Section 2A-103(1)(h).
"Lease". Section 2A-103(1)(j).
"Lease agreement". Section 2A-103(1)(k).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Present value". Section ~~2A-103(1)(u)~~1-201(b)(28).
"Reasonable time". Section ~~1-204(1) and (2)~~1-205(a).

**Section 2A-530. Lessor's Incidental Damages**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Aggrieved party". Section ~~1-201(2)~~1-201(b)(2).
"Delivery". Section ~~1-201(14)~~1-201(b)(15).
"Goods". Section 2A-103(1)(h).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).

**Section 2A-531. Standing to Sue Third Parties for Injury to Goods**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Action". Section ~~1-201(1)~~1-201(b)(1).
"Goods". Section 2A-103(1)(h).
"Lease contract". Section 2A-103(1)(*l* ).
"Lessee". Section 2A-103(1)(n).
"Lessor". Section 2A-103(1)(p).
"Party". Section ~~1-201(29)~~1-201(b)(26).
"Right~~s~~". Section ~~1-201(36)~~1-201(b)(34).
"Security interest". Section ~~1-201(37)~~1-201(b)(35).

**Section 2A-532. Lessor's Rights to Residual Interest**

In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

~~*As added in 1990.*~~

**Official Comment**

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 3 – NEGOTIABLE INSTRUMENTS

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**
**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

*WITH COMMENTS*

As adopted in 1990 and revised in: (i) 1991, 1992, 1993 to correct errata; (ii) 1994 by PEB Commentary No. 11; (iii) 1994, in connection with the revision of Article 8; (iv) 2001, in connection with the revision of Article 1; (iv) 2002, 2003, 2005, and 2007, pursuant to minor amendments; and (v) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

**UNIFORM COMMERCIAL CODE**
**~~REVISED~~ ARTICLE 3~~.~~ – NEGOTIABLE INSTRUMENTS**

**PREFATORY NOTE**

* * *

# UNIFORM COMMERCIAL CODE
# ARTICLE 3. – NEGOTIABLE INSTRUMENTS

## PART 1

## GENERAL PROVISIONS AND DEFINITIONS

### Section 3-101. Short Title

* * *

### Section 3-102. Subject Matter

* * *

#### Official Comment

* * *

### Section 3-103. Definitions

* * *

#### Official Comment

* * *

5. Subsection (a)~~(7)~~(9) is a definition of ordinary care which is applicable not only to Article 3 but to Article 4 as well. See Section 4-104(c). The general rule is stated in the first sentence of subsection (a)~~(7)~~(9) and it applies both to banks and to persons engaged in businesses other than banking. Ordinary care means observance of reasonable commercial standards of the relevant businesses prevailing in the area in which the person is located. The second sentence of subsection (a)~~(7)~~(9) is a particular rule limited to the duty of a bank to examine an instrument taken by a bank for processing for collection or payment by automated means. This particular rule applies primarily to Section 4-406 and it is discussed in Comment 4 to that section. Nothing in Section 3-103(a)(9) is intended to prevent a customer from proving that the procedures followed by a bank are unreasonable, arbitrary, or unfair.

* * *

### Section 3-104. Negotiable Instrument

* * *

#### Official Comment

1. The definition of "negotiable instrument" defines the scope of Article 3 since Section 3-102 states: "This Article applies to negotiable instruments." The definition in Section 3-104(a) incorporates other definitions in Article 3. An instrument is either a "promise," defined in

Section 3-103(a)(9), or "order," defined in Section 3-103(a)(6). A promise is a written undertaking to pay money signed by the person undertaking to pay. An order is a written instruction to pay money signed by the person giving the instruction. Thus, the term "negotiable instrument" is limited to a signed writing that orders or promises payment of money. "Money" is defined in Section ~~1-201(24)~~1-201(b)(24) and is not limited to United States dollars. It also includes a medium of exchange established by a foreign government or monetary units of account established by an intergovernmental organization or by agreement between two or more nations. Five other requirements are stated in Section 3-104(a): First, the promise or order must be "unconditional." The quoted term is explained in Section 3-106. Second, the amount of money must be "a fixed amount *** with or without interest or other charges described in the promise or order." Section 3-112(b) relates to "interest." Third, the promise or order must be "payable to bearer or to order." The quoted phrase is explained in Section 3-109. An exception to this requirement is stated in subsection (c). Fourth, the promise or order must be payable "on demand or at a definite time." The quoted phrase is explained in Section 3-108. Fifth, the promise or order may not state "any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money" with five exceptions. The quoted phrase is based on the first sentence of N.I.L. Section 5 which is the precursor of "no other promise, order, obligation or power given by the maker or drawer" appearing in former Section 3-104(1)(b). The words "instruction" and "undertaking" are used instead of "order" and "promise" that are used in the N.I.L. formulation because the latter words are defined terms that include only orders or promises to pay money. The first three exceptions stated in Section 3-104(a)(3) are based on and are intended to have the same meaning as former Section 3-112(1)(b), (c), (d), and (e), as well as N.I.L. § 5(1), (2), and (3). The final two exceptions stated in Section 3-104(a)(3), added pursuant to the Uniform Commercial Code Amendments (2022), deal with choice-of-law and choice-of-forum clauses. The latter of these includes an agreement to arbitrate. Subsection (b) states that "instrument" means a "negotiable instrument." This follows former Section 3-102(1)(e) which treated the two terms as synonymous.

2. Unless subsection (c) applies, the effect of subsection (a)(1) and Section 3-102(a) is to exclude from Article 3 any promise or order that is not payable to bearer or to order. There is no provision in revised Article 3 that is comparable to former Section 3-805. The comment to former Section 3-805 states that the typical example of a writing covered by that section is a check reading "Pay John Doe." Such a check was governed by former Article 3 but there could not be a holder in due course of the check. Under Section 3-104(c) such a check is governed by revised Article 3 and there can be a holder in due course of the check. But subsection (c) applies only to checks. The comment to former Section 3-805 does not state any example other than the check to illustrate that section. Subsection (c) is based on the belief that it is good policy to treat checks, which are payment instruments, as negotiable instruments whether or not they contain the words "to the order of". These words are almost always pre-printed on the check form. Occasionally the drawer of a check may strike out these words before issuing the check. In the past some credit unions used check forms that did not contain the quoted words. Such check forms may still be in use but they are no longer common. Absence of the quoted words can easily be overlooked and should not affect the rights of holders who may pay money or give credit for a check without being aware that it is not in the conventional form.
* * *

Moreover, consistent with the principle stated in Section ~~1-102(2)(b)~~1-103(a)(2), the immediate parties to an order or promise that is not an instrument may provide by agreement that one or more of the provisions of Article 3 determine their rights and obligations under the

writing. Upholding the parties' choice is not inconsistent with Article 3. Such an agreement may bind a transferee of the writing if the transferee has notice of it or the agreement arises from usage of trade and the agreement does not violate other law or public policy. An example of such an agreement is a provision that a transferee of the writing has the rights of a holder in due course stated in Article 3 if the transferee took rights under the writing in good faith, for value, and without notice of a claim or defense.

Even without an agreement of the parties to an order or promise that is not an instrument, it may be appropriate, consistent with the principles stated in Section ~~1-102(2)~~1-103(a), for a court to apply one or more provisions of Article 3 to the writing by analogy, taking into account the expectations of the parties and the differences between the writing and an instrument governed by Article 3. Whether such application is appropriate depends upon the facts of each case.

* * *

**Section 3-105. Issue of Instrument**

* * *

**Official Comment**

* * *

**Section 3-106. Unconditional Promise or Order**

* * *

**Official Comment**

* * *

**Section 3-107. Instrument Payable in Foreign Money**

* * *

**Official Comment**

The definition of instrument in Section 3-104 requires that the promise or order be payable in "money." That term is defined in Section ~~1-201(24)~~1-201(b)(24) and is not limited to United States dollars. Section 3-107 states than an instrument payable in foreign money may be paid in dollars if the instrument does not prohibit it. It also states a conversion rate which applies in the absence of a different conversion rate stated in the instrument. The reference in former Section 3-107(1) to instruments payable in "currency" or "current funds" has been dropped as superfluous.

**Section 3-108. Payable on Demand or at Definite Time**

* * *

**Official Comment**

* * *

**Section 3-109. Payable to Bearer or to Order**

* * *

**Official Comment**

* * *

**Section 3-110. Identification of Person to Whom Instrument Is Payable**

* * *

**Official Comment**

* * *

4. Subsection (d) replaces former Section 3-116. An instrument payable to X or Y is governed by the first sentence of subsection (d). An instrument payable to X and Y is governed by the second sentence of subsection (d). If an instrument is payable to X or Y, either is the payee and if either is in possession that person is the holder and the person entitled to enforce the instrument. Section 3-301. If an instrument is payable to X and Y, neither X nor Y acting alone is the person to whom the instrument is payable. Neither person, acting alone, can be the holder of the instrument. The instrument is "payable to an identified person." The "identified person" is X and Y acting jointly. Section 3-109(b) and Section ~~1-102(5)(a)~~1-106(1). Thus, under Section ~~1-201(20)~~1-201(b)(21) X or Y, acting alone, cannot be the holder or the person entitled to enforce or negotiate the instrument because neither, acting alone, is the identified person stated in the instrument.

* * *

**Section 3-111. Place of Payment**

* * *

**Official Comment**

* * *

**Section 3-112. Interest**

* * *

**Official Comment**

* * *

**Section 3-113. Date of Instrument**

* * *

**Official Comment**

* * *

**Section 3-114. Contradictory Terms of Instrument**

* * *

**Official Comment**

* * *

**Section 3-115. Incomplete Instrument**

* * *

**Official Comment**

* * *

**Section 3-116. Joint and Several Liability; Contribution**

* * *

**Official Comment**

* * *

**Section 3-117. Other Agreements Affecting Instrument**

* * *

**Official Comment**

* * *

**Section 3-118. Statute of Limitations**

* * *

**Official Comment**

* * *

**Section 3-119. Notice of Right to Defend Action**

* * *

**Official Comment**

* * *

**PART 2**

**NEGOTIATION, TRANSFER, AND INDORSEMENT**

**Section 3-201. Negotiation**

* * *

**Official Comment**

1. Subsections (a) and (b) are based in part on subsection (1) of former Section 3-202. A person can become holder of an instrument when the instrument is issued to that person, or the status of holder can arise as the result of an event that occurs after issuance. "Negotiation" is the term used in Article 3 to describe this post-issuance event. Normally, negotiation occurs as the result of a voluntary transfer of possession of an instrument by a holder to another person who becomes the holder as a result of the transfer. Negotiation always requires a change in possession of the instrument because nobody can be a holder without possessing the instrument, either directly or through an agent. But in some cases the transfer of possession is involuntary and in some cases the person transferring possession is not a holder. In defining "negotiation" former Section 3-202(1) used the word "transfer," an undefined term, and "delivery," defined in Section ~~1-201(14)~~1-201(b)(15) to mean voluntary change of possession. Instead, subsections (a) and (b) use the term "transfer of possession" and, subsection (a) states that negotiation can occur by an involuntary transfer of possession. For example, if an instrument is payable to bearer and it is stolen by Thief or is found by Finder, Thief or Finder becomes the holder of the instrument when possession is obtained. In this case there is an involuntary transfer of possession that results in negotiation to Thief or Finder.

* * *

**Section 3-202. Negotiation Subject to Rescission**

* * *

**Official Comment**

* * *

**Section 3-203. Transfer of Instrument; Rights Acquired by Transfer**

* * *

**Official Comment**

* * *

**Section 3-204. Indorsement**

* * *

**Official Comment**

* * *

**Section 3-205. Special Indorsement; Blank Indorsement; Anomalous Indorsement**

* * *

**Official Comment**

* * *

4. Articles 14 and 16 of the Convention on International Bills of Exchange and International Promissory Notes ~~includes~~ include similar rules for blank and special indorsements.

**Section 3-206. Restrictive Indorsement**

* * *

**Official Comment**

* * *

**Section 3-207. Reacquisition**

* * *

**Official Comment**

Section 3-207 restates former Section 3-208. Reacquisition refers to cases in which a former holder reacquires the instrument either by negotiation from the present holder or by a transfer other than negotiation. If the reacquisition is by negotiation, the former holder reacquires the status of holder. Although Section 3-207 allows the holder to cancel all indorsements made after the holder first acquired holder status, cancellation is not necessary. Status of holder is not affected whether or not cancellation is made. But if the reacquisition is not the result of negotiation the former holder can obtain holder status only by striking the former holder's indorsement and any subsequent indorsements. The latter case is an exception to the general rule that if an instrument is payable to an identified person, the indorsement of that person is necessary to allow a subsequent transferee to obtain the status of holder. Reacquisition without indorsement by the person to whom the instrument is payable is illustrated by two examples:

*Case # 1.* X, a former holder, buys the instrument from Y, the present holder. Y delivers the instrument to X but fails to indorse it. Negotiation does not occur because the transfer of possession did not result in X's becoming holder. Section 3-201(a). The instrument by its terms is payable to Y, not to X. But X can obtain the status of holder by striking X's indorsement and all subsequent indorsements. When these indorsements are struck, the instrument by its terms is payable either to X or to bearer, depending upon how X originally became holder. In either case X becomes holder. Section ~~1-201(20)~~1-201(b)(21).

* * *

## PART 3

## ENFORCEMENT OF INSTRUMENTS

### Section 3-301. Person Entitled to Enforce Instrument

* * *

#### Official Comment

* * *

### Section 3-302. Holder in Due Course

* * *

#### Official Comment

* * *

### Section 3-303. Value and Consideration

* * *

#### Official Comment

1. Subsection (a) is a restatement of former Section 3-303 and subsection (b) replaces former Section 3-408. The distinction between value and consideration in Article 3 is a very fine one. Whether an instrument is taken for value is relevant to the issue of whether a holder is a holder in due course. If an instrument is not issued for consideration the issuer has a defense to the obligation to pay the instrument. Consideration is defined in subsection (b) as "any consideration sufficient to support a simple contract." The definition of value in Section ~~1-201(44)~~1-204, which doesn't apply to Article 3, includes "any consideration sufficient to support a simple contract." Thus, outside Article 3, anything that is consideration is also value. A different rule applies in Article 3. Subsection (b) of Section 3-303 states that if an instrument is issued for value it is also issued for consideration.

* * *

**Section 3-304. Overdue Instrument**

* * *

**Official Comment**

* * *

**Section 3-305. Defenses and Claims in Recoupment**

* * *

**Official Comment**

1. Subsection (a) states the defenses to the obligation of a party to pay the instrument. Subsection (a)(1) states the "real defenses" that may be asserted against any person entitled to enforce the instrument.

* * *

Subsection (a)(1)(iv) states specifically that the defense of discharge in insolvency proceedings is not cut off when the instrument is purchased by a holder in due course. ~~"Insolvency proceedings"~~ An "insolvency proceeding" is defined in Section ~~1-201(22)~~1-201(b)(22) and it includes bankruptcy whether or not the debtor is insolvent. Subsection (2)(e) of former Section 3-305 is omitted. The substance of that provision is stated in Section 3-601(b).

* * *

**Section 3-306. Claims to an Instrument**

* * *

**Official Comment**

* * *

**Section 3-307. Notice of Breach of Fiduciary Duty**

* * *

**Official Comment**

* * *

2. Subsection (a) defines the terms "fiduciary" and "represented person" and the introductory paragraph of subsection (b) describes the transaction to which the section applies. The basic scenario is one in which the fiduciary in effect embezzles money of the represented person by applying the proceeds of an instrument that belongs to the represented person to the

personal use of the fiduciary. The person dealing with the fiduciary may be a depositary bank that takes the instrument for collection or a bank or other person that pays value for the instrument. The section also covers a transaction in which an instrument is presented for payment to a payor bank that pays the instrument by giving value to the fiduciary. Subsections (b)(2), (3), and (4) state rules for determining when the person dealing with the fiduciary has notice of breach of fiduciary duty. Subsection (b)(1) states that notice of breach of fiduciary duty is notice of the represented person's claim to the instrument or its proceeds.

* * *

Section 3-307(b) applies only if the person dealing with the fiduciary "has knowledge of the fiduciary status of the fiduciary." Notice which does not amount to knowledge is not enough to cause Section 3-307 to apply. "Knowledge" is defined in Section ~~1-201(25)~~1-202(b). In most cases, the "taker" referred to in Section 3-307 will be a bank or other organization. Knowledge of an organization is determined by the rules stated in Section ~~1-201(27)~~1-202(f). In many cases, the individual who receives and processes an instrument on behalf of the organization that is the taker of the instrument "for payment or collection or for value" is a clerk who has no knowledge of any fiduciary status of the person from whom the instrument is received. In such cases, Section 3-307 doesn't apply because, under Section ~~1-201(27)~~1-202(f), knowledge of the organization is determined by the knowledge of the "individual conducting that transaction," i.e. the clerk who receives and processes the instrument. Furthermore, paragraphs (2) and (4) each require that the person acting for the organization have knowledge of facts that indicate a breach of fiduciary duty. In the case of an instrument taken for deposit to an account, the knowledge is found in the fact that the deposit is made to an account other than that of the represented person or a fiduciary account for benefit of that person. In other cases the person acting for the organization must know that the instrument is taken in payment or as security for a personal debt of the fiduciary or for the personal benefit of the fiduciary. For example, if the instrument is being used to buy goods or services, the person acting for the organization must know that the goods or services are for the personal benefit of the fiduciary. The requirement that the taker have knowledge rather than notice is meant to limit Section 3-307 to relatively uncommon cases in which the person who deals with the fiduciary knows all the relevant facts: the fiduciary status and that the proceeds of the instrument are being used for the personal debt or benefit of the fiduciary or are being paid to an account that is not an account of the represented person or of the fiduciary, as such. Mere notice of these facts is not enough to put the taker on notice of the breach of fiduciary duty and does not give rise to any duty of investigation by the taker.

* * *

**Section 3-308. Proof of Signatures and Status as Holder in Due Course**

* * *

**Official Comment**

1. Section 3-308 is a modification of former Section 3-307. The first two sentences of subsection (a) are a restatement of former Section 3-307(1). The purpose of the requirement of a specific denial in the pleadings is to give the plaintiff notice of the defendant's claim of forgery or lack of authority as to the particular signature, and to afford the plaintiff an opportunity to investigate and obtain evidence. If local rules of pleading permit, the denial may be on

information and belief, or it may be a denial of knowledge or information sufficient to form a belief. It need not be under oath unless the local statutes or rules require verification. In the absence of such specific denial the signature stands admitted, and is not in issue. Nothing in this section is intended, however, to prevent amendment of the pleading in a proper case.

The question of the burden of establishing the signature arises only when it has been put in issue by specific denial. "Burden of establishing" is defined in Section ~~1-201~~1-201(b)(8). The burden is on the party claiming under the signature, but the signature is presumed to be authentic and authorized except as stated in the second sentence of subsection (a). Pursuant to Section 1-206, ~~"Presumed" is defined in Section 1-201 and means that~~ until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid. The presumption rests upon the fact that in ordinary experience forged or unauthorized signatures are very uncommon, and normally any evidence is within the control of, or more accessible to, the defendant. The defendant is therefore required to make some sufficient showing of the grounds for the denial before the plaintiff is required to introduce evidence. The defendant's evidence need not be sufficient to require a directed verdict, but it must be enough to support the denial by permitting a finding in the defendant's favor. Until introduction of such evidence the presumption requires a finding for the plaintiff. Once such evidence is introduced the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff. The presumption does not arise if the action is to enforce the obligation of a purported signer who has died or become incompetent before the evidence is required, and so is disabled from obtaining or introducing it. "Action" is defined in Section ~~1-201~~1-201(b)(1) and includes a claim asserted against the estate of a deceased or an incompetent.

* * *

**Section 3-309. Enforcement of Lost, Destroyed, or Stolen Instrument**

* * *

**Official Comment**

* * *

**Section 3-310. Effect of Instrument on Obligation for Which Taken**

* * *

**Official Comment**

* * *

**Section 3-311. Accord and Satisfaction by Use of Instrument**

* * *

**Official Comment**

* * *

3. As part of the revision of Article 3, Section 1-207 was ~~has been~~ amended to add subsection (2) stating that Section 1-207 "does not apply to an accord and satisfaction." That statement is now in Section 1-308(b). Because of that amendment and revised Article 3, Section 3-311 governs full satisfaction checks. Section 3-311 follows the common law rule with some minor variations to reflect modern business conditions. In cases covered by Section 3-311 there will often be an individual on one side of the dispute and a business organization on the other. This section is not designed to favor either the individual or the business organization. In Case # 1 the person seeking the accord and satisfaction is an individual. In Case # 2 the person seeking the accord and satisfaction is an insurance company. Section 3-311 is based on a belief that the common law rule produces a fair result and that informal dispute resolution by full satisfaction checks should be encouraged.

4. Subsection (a) states three requirements for application of Section 3-311. "Good faith" in subsection (a)(i) is defined in Section 3-103(a)(4) as not only honesty in fact, but the observance of reasonable commercial standards of fair dealing. The meaning of "fair dealing" will depend upon the facts in the particular case. For example, suppose an insurer tenders a check in settlement of a claim for personal injury in an accident clearly covered by the insurance policy. The claimant is necessitous and the amount of the check is very small in relationship to the extent of the injury and the amount recoverable under the policy. If the trier of fact determines that the insurer was taking unfair advantage of the claimant, an accord and satisfaction would not result from payment of the check because of the absence of good faith by the insurer in making the tender. Another example of lack of good faith is found in the practice of some business debtors in routinely printing full satisfaction language on their check stocks so that all or a large part of the debts of the debtor are paid by checks bearing the full satisfaction language, whether or not there is any dispute with the creditor. Under such a practice the claimant cannot be sure whether a tender in full satisfaction is or is not being made. Use of a check on which full satisfaction language was affixed routinely pursuant to such a business practice may prevent an accord and satisfaction on the ground that the check was not tendered in good faith under subsection (a)(i).

* * *

The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met. If that person also proves that the statement required by subsection (b) was given, the claim is discharged unless subsection (c) applies. Normally the statement required by subsection (b) is written on the check. Thus, the canceled check can be used to prove the statement as well as the fact that the claimant obtained payment of the check. Subsection (b) requires a "conspicuous" statement that the instrument was tendered in full satisfaction of the claim. "Conspicuous" is defined in Section ~~1-201(10)~~1-201(b)(10). ~~The statement is conspicuous if "it is so written that a reasonable person against whom it is to operate ought to have noticed it."~~ If the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous. In cases in which the claimant is an individual the claimant will receive the check and will normally indorse it. Since the statement concerning tender in full satisfaction normally will appear above the space provided for the claimant's indorsement of the check, the claimant "ought to have noticed" the statement.

* * *

7. Subsection (c) is subject to subsection (d). If a person against whom a claim is asserted

proves that the claimant obtained payment of a check known to have been tendered in full satisfaction of the claim by "the claimant or an agent of the claimant having direct responsibility with respect to the disputed obligation," the claim is discharged even if (i) the check was not sent to the person, office, or place required by a notice complying with subsection (c)(1), or (ii) the claimant tendered repayment of the amount of the check in compliance with subsection (c)(2).

A claimant knows that a check was tendered in full satisfaction of a claim when the claimant ~~"has actual~~has "actual knowledge" of that fact. Section ~~1-201(25)~~1-202(b). Under Section ~~1-201(27)~~1-202(f), if the claimant is an organization, it has knowledge that a check was tendered in full satisfaction of the claim when that fact is

* * *

If a full satisfaction check is sent to a lock box or other office processing checks sent to the claimant, it is irrelevant whether the clerk processing the check did or did not see the statement that the check was tendered as full satisfaction of the claim. Knowledge of the clerk is not imputed to the organization because the clerk has no responsibility with respect to an accord and satisfaction. Moreover, there is no failure of "due diligence" under Section ~~1-201(27)~~1-202(f) if the claimant does not require its clerks to look for full satisfaction statements on checks or accompanying communications. Nor is there any duty of the claimant to assign that duty to its clerks. Section 3-311(c) is intended to allow a claimant to avoid an inadvertent accord and satisfaction by complying with either subsection (c)(1) or (2) without burdening the check-processing operation with extraneous and wasteful additional duties.

8. In some cases the disputed claim may have been assigned to a finance company or bank as part of a financing arrangement with respect to accounts receivable. If the account debtor was notified of the assignment, the claimant is the assignee of the account receivable and the "agent of the claimant" in subsection (d) refers to an agent of the assignee.

**Section 3-312. Lost, Destroyed, or Stolen Cashier's Check, Teller's Check, or Certified Check**

* * *

**Official Comment**

* * *

3. A claim asserted under subsection (b) does not have any legal effect, however, until the date it becomes enforceable, which cannot be earlier than 90 days after the date of a cashier's check or teller's check or 90 days after the date of acceptance of a certified check. Thus, if a lost check is presented for payment within the 90-day period, the bank may pay a person entitled to enforce the check without regard to the claim and is discharged of all liability with respect to the check. This ensures the continued utility of cashier's checks, teller's checks, and certified checks as cash equivalents. Virtually all such checks are presented for payment within 90 days.

* * *

An obligated bank that pays the amount of a check to a claimant under subsection (b)(4) is discharged of all liability on the check so long as the assertion of the claim meets the requirements of subsection (b) discussed in Comment 2. This is important in cases of fraudulent declarations of loss. For example, if the claimant falsely alleges a loss that in fact did not occur, the bank, subject to Section ~~1-203~~1-304, may rely on the declaration of loss. On the other hand, a claim may be asserted only by a person described in subsection (b)(i). Thus, the bank is discharged under subsection (a)(4) only if it pays such a person. Although it is highly unlikely, it is possible that more than one person could assert a claim under subsection (b) to the amount of a check. Such a case could occur if one of the claimants makes a false declaration of loss. The obligated bank is not required to determine whether a claimant who complies with subsection (b) is acting wrongfully. The bank may utilize procedures outside this Article, such as interpleader, under which the conflicting claims may be adjudicated.

* * *

## PART 4

## LIABILITY OF PARTIES

### Section 3-401. Signature Necessary for Liability on Instrument

* * *

#### Official Comment

* * *

### Section 3-402. Signature by Representative

* * *

#### Official Comment

* * *

3. Subsection (c) is directed at the check cases. It states that if the check identifies the represented person the agent who signs on the signature line does not have to indicate agency status. Virtually all checks used today are in personalized form which identify the person on whose account the check is drawn. In this case, nobody is deceived into thinking that the person signing the check is meant to be liable. This subsection is meant to overrule cases decided under former Article 3 such as *Griffin v. Ellinger*, 538 S.W.2d 97 (~~Texas~~Tex. 1976).

### Section 3-403. Unauthorized Signature

* * *

#### Official Comment

1. ~~"Unauthorized" signature~~ "Unauthorized signature" is defined in Section

~~1-201(43)~~1-201(b)(41) as one that includes a forgery as well as a signature made by one exceeding actual or apparent authority. Former Section 3-404(1) stated that an unauthorized signature was inoperative as the signature of the person whose name was signed unless that person "is precluded from denying it." Under former Section 3-406 if negligence by the person whose name was signed contributed to an unauthorized signature, that person "is precluded from asserting the *** lack of authority." Both of these sections were applied to cases in which a forged signature appeared on an instrument and the person asserting rights on the instrument alleged that the negligence of the purported signer contributed to the forgery. Since the standards for liability between the two sections differ, the overlap between the sections caused confusion. Section 3-403(a) deals with the problem by removing the preclusion language that appeared in former Section 3-404.

* * *

4. Subsection (b) clarifies the meaning of "unauthorized" in cases in which an instrument contains less than all of the signatures that are required as authority to pay a check. Judicial authority was split on the issue whether the one-year notice period under former Section 4-406(4) (now Section 4-406(f)) barred a customer's suit against a payor bank that paid a check containing less than all of the signatures required by the customer to authorize payment of the check. Some cases took the view that if a customer required that a check contain the signatures of both A and B to authorize payment and only A signed, there was no unauthorized signature within the meaning of that term in former Section 4-406(4) because A's signature was neither unauthorized nor forged. The other cases correctly pointed out that it was the customer's signature at issue and not that of A; hence, the customer's signature was unauthorized if all signatures required to authorize payment of the check were not on the check. Subsection (b) follows the latter line of cases. The same analysis applies if A forged the signature of B. Because the forgery is not effective as a signature of B, the required signature of B is lacking.

Subsection (b) refers to "the authorized signature of an organization." The definition of "organization" in Section ~~1-201(28)~~1-201(b)(25) is very broad. It covers not only commercial entities but also "two or more persons having a joint or common interest." Hence subsection (b) would apply when a husband and wife are both required to sign an instrument.

**Section 3-404. Impostors; Fictitious Payees**

* * *

**Official Comment**

* * *

**Section 3-405. Employer's Responsibility for Fraudulent Indorsement by Employee**

* * *

**Official Comment**

* * *

**Section 3-406. Negligence Contributing to Forged Signature or Alteration of Instrument**

* * *

**Official Comment**

* * *

2. Section 3-406 applies equally to a failure to exercise ordinary care that substantially contributes to the making of a forged signature on an instrument. Section 3-406 refers to "forged signature" rather than "unauthorized signature" that appeared in former Section 3-406 because it more accurately describes the scope of the provision. Unauthorized signature is a broader concept that includes not only forgery but also the signature of an agent which does not bind the principal under the law of agency. The agency cases are resolved independently under agency law. Section 3-406 is not necessary in those cases.

The "substantially contributes" test of former Section 3-406 is continued in this section in preference to a "direct and proximate cause" test. The "substantially contributes" test is meant to be less stringent than a "direct and proximate cause" test. Under the less stringent test the preclusion should be easier to establish. Conduct "substantially contributes" to a material alteration or forged signature if it is a contributing cause of the alteration or signature and a substantial factor in bringing it about. The analysis of "substantially contributes" in former Section 3-406 by the court in *Thompson Maple Products v. Citizens ~~National~~ Nat'l Bank of Corry*, 234 A.2d 32 (Pa. Super. Ct. 1967), states what is intended by the use of the same words in revised Section 3-406(b). Since Section 3-404(d) and Section 3-405(b) also use the words "substantially contributes" the analysis of these words also applies to those provisions.

* * *

**Section 3-407. Alteration**

* * *

**Official Comment**

* * *

**Section 3-408. Drawee Not Liable on Unaccepted Draft**

* * *

**Official Comment**

* * *

**Section 3-409. Acceptance of Draft; Certified Check**

* * *

**Official Comment**

* * *

**Section 3-410. Acceptance Varying Draft**

* * *

**Official Comment**

* * *

**Section 3-411. Refusal to Pay Cashier's Checks, Teller's Checks, and Certified Checks**

* * *

**Official Comment**

* * *

**Section 3-412. Obligation of Issuer of Note or Cashier's Check**

* * *

**Official Comment**

* * *

**Section 3-413. Obligation of Acceptor**

* * *

**Official Comment**

Subsection (a) is consistent with former Section 3-413(1). Subsection (b) has primary importance with respect to certified checks. It protects the holder in due course of a certified check that was altered after certification and before negotiation to the holder in due course. A bank can avoid liability for the altered amount by stating on the check the amount the bank agrees to pay. The subsection applies to other accepted drafts as well. The rule of this section is similar to the rule of ~~Articles~~ Article 41 of the Convention on International Bills of Exchange and International Promissory Notes. Articles 42 and 43 of the Convention include more detailed rules that in many respects do not have parallels in this Article.

**Section 3-414. Obligation of Drawer**

* * *

**Official Comment**

* * *

**Section 3-415. Obligation of Indorser**

* * *

**Official Comment**

* * *

**Section 3-416. Transfer Warranties**

* * *

**Official Comment**

* * *

4. Under subsection (a)(5) the transferor does not warrant against difficulties of collection, impairment of the credit of the obligor or even insolvency. The transferee is expected to determine such questions before taking the obligation. If an insolvency ~~proceedings~~ proceeding as defined in Section ~~1-201(22)~~1-201(b)(22) ~~have~~ has been instituted against the party who is expected to pay and the transferor knows it, the concealment of that fact amounts to a fraud upon the transferee, and the warranty against knowledge of such proceedings is provided accordingly.

* * *

**Section 3-417. Presentment Warranties**

* * *

**Official Comment**

* * *

**Section 3-418. Payment or Acceptance by Mistake**

* * *

**Official Comment**

* * *

4. The right of the drawee to recover a payment or to revoke an acceptance under Section

3-418 is not affected by the rules under Article 4 that determine when an item is paid. Even though a payor bank may have paid an item under Section 4-215, it may have a right to recover the payment under Section 3-418. ~~*National*~~ *Nat'l Savings & Trust Co. v. Park Corp.*, 722 F.2d 1303 (6th Cir. 1983), *cert. denied*, 466 U.S. 939 (1984), correctly states the law on the issue under former Article 3. Revised Article 3 does not change the previous law.

**Section 3-419. Instruments Signed for Accommodation**

* * *

**Official Comment**

* * *

**Section 3-420. Conversion of Instrument**

* * *

**Official Comment**

1. Section 3-420 is a modification of former Section 3-419. The first sentence of Section 3-420(a) states a general rule that the law of conversion applicable to personal property also applies to instruments. Paragraphs (a) and (b) of former Section 3-419(1) are deleted as inappropriate in cases of noncash items that may be delivered for acceptance or payment in collection letters that contain varying instructions as to what to do in the event of nonpayment on the day of delivery. It is better to allow such cases to be governed by the general law of conversion that would address the issue of when, under the circumstances prevailing, the presenter's right to possession has been denied. The second sentence of Section 3-420(a) states that an instrument is converted if it is taken by transfer other than a negotiation from a person not entitled to enforce the instrument or taken for collection or payment from a person not entitled to enforce the instrument or receive payment. This covers cases in which a depositary or payor bank takes an instrument bearing a forged indorsement. It also covers cases in which an instrument is payable to two persons and the two persons are not alternative payees, e.g. a check payable to John and Jane Doe. Under Section 3-110(d) the check can be negotiated or enforced only by both persons acting jointly. Thus, neither payee acting without the consent of the other, is a person entitled to enforce the instrument. If John indorses the check and Jane does not, the indorsement is not effective to allow negotiation of the check. If Depositary Bank takes the check for deposit to John's account, Depositary Bank is liable to Jane for conversion of the check if she did not consent to the transaction. John, acting alone, is not the person entitled to enforce the check because John is not the holder of the check. Section 3-110(d) and Comment 4 to Section 3-110. Depositary Bank does not get any greater rights under Section 4-205(1). If it acted for John as its customer, it did not become holder of the check under that provision because John, its customer, was not a holder.

Under former Article 3, the cases were divided on the issue of whether the drawer of a check with a forged indorsement can assert rights against a depositary bank that took the check. The last sentence of Section 3-420(a) resolves the conflict by following the rule stated in *Stone & Webster Eng'g* ~~*ineering*~~ *Corp. v. First* ~~*National*~~ *Nat'l Bank & Trust Co.*, 184 N.E.2d 358 (Mass.1962). There is no reason why a drawer should have an action in conversion. The check

represents an obligation of the drawer rather than property of the drawer. The drawer has an adequate remedy against the payor bank for recredit of the drawer's account for unauthorized payment of the check.

* * *

## PART 5

## DISHONOR

### Section 3-501. Presentment

* * *

#### Official Comment

* * *

### Section 3-502. Dishonor

* * *

#### Official Comment

* * *

5. Subsection (c) gives drawees an extended period to pay documentary drafts because of the time that may be needed to examine the documents. ~~The period prescribed is that given by Section 5-112 in cases in which a letter of credit is involved.~~

* * *

### Section 3-503. Notice of Dishonor

* * *

#### Official Comment

* * *

### Section 3-504. Excused Presentment and Notice of Dishonor

* * *

#### Official Comment

* * *

### Section 3-505. Evidence of Dishonor

* * *

**Official Comment**

* * *

## PART 6

## DISCHARGE AND PAYMENT

### Section 3-601. Discharge and Effect of Discharge

* * *

**Official Comment**

* * *

### Section 3-602. Payment

* * *

**Official Comment**

* * *

### Section 3-603. Tender of Payment

* * *

**Official Comment**

* * *

### Section 3-604. Discharge by Cancellation or Renunciation

* * *

**Official Comment**

* * *

3. Former subsection (c) has been deleted as unnecessary in view of the revised definition of "sign" in Section ~~1-201~~1-201(b)(37).

### Section 3-605. Discharge of Secondary Obligors

* * *

**Official Comment**

* * *

5. Subsection (b) is based on *Restatement of Suretyship and Guaranty* § 40 and relates to extensions of the due date of the instrument. An extension of time to pay a note is often beneficial to the secondary obligor because the additional time may enable the principal obligor to obtain the funds to pay the instrument. In some cases, however, the extension may cause loss to the secondary obligor, particularly if deterioration of the financial condition of the principal obligor reduces the amount that the secondary obligor is able to recover on its right of recourse when default occurs. For example, suppose that the instrument is an installment note and the principal debtor is temporarily short of funds to pay a monthly installment. The payee agrees to extend the due date of the installment for a month or two to allow the debtor to pay when funds are available. Paragraph (b)(2) provides that an extension of time results in a discharge of the secondary obligor, but only to the extent that the secondary obligor proves that the extension caused loss. See subsection (h) (discussing the burden of proof under Section 3-605). Thus, if the extension is for a long period, the secondary obligor might be able to prove that during the period of extension the principal obligor became insolvent, reducing the value of the right of recourse of the secondary obligor. In such a case, paragraph (b)(2) discharges the secondary obligor to the extent of that harm. Although not required to notify the secondary obligor of the extension, the payee can minimize the risk of loss by the secondary obligor by giving the secondary obligor prompt notice of the extension; prompt notice can enhance the likelihood that the secondary obligor's right of recourse can remain valuable, and thus can limit the likelihood that the secondary obligor will suffer a loss because of the extension. See *Restatement of Suretyship and Guaranty* ~~Section~~ § 38 comment b.

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**

**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

*WITH COMMENTS*

As adopted in 1962 and revised in: (i) 1990, in connection with the revision of Article 3; (ii) 1991 to correct errata; (iii) 1994, in connection with the revision of Article 8; (iv) 1999, in connection with the revision of Article 9; (iv) 2001, in connection with the revision of Article 1; (v) 2002, in connection with amendments; (vi) 2003, in connection with the revision of Article 7; and (vii) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

## ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS

## PART 1

## GENERAL PROVISIONS AND DEFINITIONS

### Section 4-101. Short Title

* * *

### Official Comment

* * *

### Section 4-102. Applicability

* * *

### Official Comment

* * *

**Purposes:**

1. The rules of Article 3 governing negotiable instruments, their transfer, and the contracts of the parties thereto apply to the items collected through banking channels wherever no specific provision is found in this Article. In the case of conflict, this Article governs. See Section 3-102(b).

* * *

Section 4-210 deals specifically with overlapping problems and possible conflicts between this Article and Article 9. However, similar reconciling provisions are not necessary in the case of Articles 5 and 7. Sections 4-301 and 4-302 are consistent with Section ~~5-112~~5-108. In the case of Article 7 documents of title frequently accompany items but they are not themselves items. See Section 4-104(a)(9).

* * *

2. Subsection (b) is designed to state a workable rule for the solution of otherwise vexatious problems of the conflicts of laws:

* * *

c. The phrase "action or non-action with respect to any item handled by it for purposes of presentment, payment or collection" is intended to make the conflicts rule of subsection (b) apply from the inception of the collection process of an item through all phases of deposit, forwarding, presentment, payment and remittance or credit of proceeds. Specifically the subsection applies to the initial act of a depositary bank in receiving an item and to the incidents

of such receipt. The conflicts rule of *Weissman v. Banque De Bruxelles*, ~~254 N.Y. 488,~~ 173 N.E. 835 (N.Y. 1930), is rejected. The subsection applies to questions of possible vicarious liability of a bank for action or non-action of sub-agents (see Section 4-202(c)) and tests these questions by the law of the state of the location of the bank which uses the sub-agent. The conflicts rule of *St. Nicholas Bank of New York v. State* ~~*Nat*~~*Nat'l. Bank*, ~~128 N.Y. 26,~~ 27 N.E. 849~~, 13 L.R.A. 241~~ (N.Y. 1891), is rejected. The subsection applies to action or non-action of a payor bank in connection with handling an item (see Sections 4-215(a), 4-301, 4-302, 4-303) as well as action or non-action of a collecting bank (Sections 4-201 through 4-216); to action or non-action of a bank which suspends payment or is affected by another bank suspending payment (Section 4-216); to action or non-action of a bank with respect to an item under the rule of Part 4 of Article 4.

d. In a case in which subsection (b) makes this Article applicable, Section 4-103(a) leaves open the possibility of an agreement with respect to applicable law. This freedom of agreement follows the general policy of Section ~~1-105~~1-301.

**Cross References:**

Sections ~~1-105~~1-301; 3-103(2) and Article 3; all sections of Article 4; ~~5-112~~5-108; Article 7; 8-108 and 8-304 ~~and 8-306~~; Article 9.

* * *

**Section 4-103. Variation by Agreement; Measure of Damages; Action Constituting Ordinary Care**

* * *

**Official Comment**

* * *

**Purposes:**

1. Section ~~1-102~~1-302 states the general principles and rules for variation of the effect of this Act by agreement and the limitations to this power. Section 4-103 states the specific rules for variation of Article 4 by agreement and also certain standards of ordinary care. In view of the technical complexity of the field of bank collections, the enormous number of items handled by banks, the certainty that there will be variations from the normal in each day's work in each bank, the certainty of changing conditions and the possibility of developing improved methods of collection to speed the process, it would be unwise to freeze present methods of operation by mandatory statutory rules. This section, therefore, permits within wide limits variation of the effect of provisions of the Article by agreement.

2. Subsection (a) confers blanket power to vary all provisions of the Article by agreements of the ordinary kind. The agreements may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care and may not limit the measure of damages for the lack or failure, but this subsection like Section ~~1-102(3)~~1-302(b) approves the practice of parties

determining by agreement the standards by which the responsibility is to be measured. In the absence of a showing that the standards manifestly are unreasonable, the agreement controls. Owners of items and other interested parties are not affected by agreements under this subsection unless they are parties to the agreement or are bound by adoption, ratification, estoppel or the like.

As here used "agreement" has the meaning given to it by Section ~~1-201(3)~~1-201(b)(3). The agreement may be direct, as between the owner and the depositary bank; or indirect, as in the case in which the owner authorizes a particular type of procedure and any bank in the collection chain acts pursuant to such authorization. It may be with respect to a single item; or to all items handled for a particular customer, e.g., a general agreement between the depositary bank and the customer at the time a deposit account is opened. Legends on deposit tickets, collection letters and acknowledgments of items, coupled with action by the affected party constituting acceptance, adoption, ratification, estoppel or the like, are agreements if they meet the tests of the definition of "agreement". See Section ~~1-201(3)~~1-201(b)(3). *First ~~Nat.~~Nat'l Bank of Denver v. Federal Reserve Bank*, 6 F.2d 339 (8th Cir. 1925) (deposit slip); *Jefferson County Bldg. Ass'n v. Southern Bank & Trust Co*., ~~225 Ala. 25,~~ 142 So. 66 (Ala. 1932) (signature card and deposit slip); *Semingson v. Stock Yards ~~Nat.~~Nat'l Bank*, ~~162 Minn. 424,~~ 203 N.W. 412 (Minn. 1925) (passbook); *Farmers State Bank v. Union ~~Nat.~~Nat'l Bank*, ~~42 N.D. 449, 454,~~ 173 N.W. 789, 790 (N.D. 1919) (acknowledgment of receipt of item).

3. Subsection (a) (subject to its limitations with respect to good faith and ordinary care) goes far to meet the requirements of flexibility. However, it does not by itself confer fully effective flexibility. Since it is recognized that banks handle a great number of items every business day and that the parties interested in each item include the owner of the item, the drawer (if it is a check), all nonbank indorsers, the payor bank and from one to five or more collecting banks, it is obvious that it is impossible, practically, to obtain direct agreements from all of these parties on all items. In total, the interested parties constitute virtually every adult person and business organization in the United States. On the other hand they may become bound to agreements on the principle that collecting banks acting as agents have authority to make binding agreements with respect to items being handled. This conclusion was assumed but was not flatly decided in *Federal Reserve Bank of Richmond v. Malloy*, 264 U.S. 160, ~~at~~ 167~~, 44 S.Ct. 296, at 298, 68 L. Ed. 617, 31 A.L.R. 1261~~ (1924).

* * *

4. Under this Article banks come under the general obligations of the use of good faith and the exercise of ordinary care. "Good faith" is defined in Section 1-201(b)(20). The term "ordinary care" is defined in Section 3-103(a)~~(7)~~(9). These definitions are made to apply to Article 4 by Section 4-104(c). Section 4-202 states respects in which collecting banks must use ordinary care. Subsection (c) of Section 4-103 provides that action or non-action approved by the Article or pursuant to Federal Reserve regulations or operating circulars constitutes the exercise of ordinary care. Federal Reserve regulations and operating circulars constitute an affirmative standard of ordinary care equally with the provisions of Article 4 itself.

Subsection (c) further provides that, absent special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by the Article, prima facie constitutes the exercise of ordinary care. Clearing-house rules and the phrase "and the like" have the significance set forth above in these Comments. The term "general

banking usage" is not defined but should be taken to mean a general usage common to banks in the area concerned. See Section ~~1-205(2)~~1-303(c). In a case in which the adjective "general" is used, the intention is to require a usage broader than a mere practice between two or three banks but it is not intended to require anything as broad as a country-wide usage. A usage followed generally throughout a state, a substantial portion of a state, a metropolitan area or the like would certainly be sufficient. Consistently with the principle of Section ~~1-205(3)~~1-303(c), action or non-action consistent with clearing house rules or the like or with banking usages prima facie constitutes the exercise of ordinary care. However, the phrase "in the absence of special instructions" affords owners of items an opportunity to prescribe other standards and although there may be no direct supervision or control of clearing houses or banking usages by official supervisory authorities, the confirmation of ordinary care by compliance with these standards is *prima facie* only, thus conferring on the courts the ultimate power to determine ordinary care in any case in which it should appear desirable to do so. The *prima facie* rule does, however, impose on the party contesting the standards to establish that they are unreasonable, arbitrary or unfair as used by the particular bank.

* * *

6. Subsection (e) sets forth a rule for determining the measure of damages for failure to exercise ordinary care which, under subsection (a), cannot be limited by agreement. In the absence of bad faith the maximum recovery is the amount of the item concerned. The term "bad faith" is not defined; the connotation is the absence of good faith (Section ~~3-103~~1-201(b)(20)). When it is established that some part or all of the item could not have been collected even by the use of ordinary care the recovery is reduced by the amount that would have been in any event uncollectible. This limitation on recovery follows the case law. Finally, if bad faith is established the rule opens to allow the recovery of other damages, whose "proximateness" is to be tested by the ordinary rules applied in comparable cases. Of course, it continues to be as necessary under subsection (e) as it has been under ordinary common law principles that, before the damage rule of the subsection becomes operative, liability of the bank and some loss to the customer or owner must be established.

**Cross References:**

Sections ~~1-102(3), 1-203, 1-205~~1-201, 1-302, 1-303, 3-103, 4-102, 4-103. 4-104, ~~and~~ 4-202.

**Definitional Cross References:**

"Bank". Section 1-201.
"Good faith". Section 1-201.
"Item". Section 4-104.
"Usage". Section ~~1-205~~1-303.

**Section 4-104. Definitions and Index of Definitions**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

5. Paragraph (a)(6): "Documentary draft" applies even though the documents do not accompany the draft but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section ~~1-201~~1-201(b)(16) (definition of "document of title").

* * *

**Definitional Cross References:**

"Bank". Section 1-201.
"Documents". Section 1-201.
"Money". Section 1-201.
"Negotiable". Section 3-104.
"Notice". Section ~~1-201~~1-202.
"Person". Section 1-201.
"Securities". Section 8-102.

**Section 4-105. Definitions of Types of Banks**

* * *

**Official Comment**

* * *

~~**Cross References:**~~

~~Article 3, especially Sections 3-120 and 3-121.~~

**Definitional Cross References:**

"Bank". Section 1-201.
"Customer". Section 4-104.
"Drawee". Section 4-104.
"Item". Section 4-104.
"Order". Section 3-103.

**Section 4-106. Payable Through or Payable at Bank~~:~~ ; Collecting Bank**

* * *

**Official Comment**

* * *

**Section 4-107. Separate Office of Bank**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

4. Assuming that it is not desirable to make each branch a separate bank for all purposes, this section provides that a branch or separate office is a separate bank for certain purposes. In so doing the single legal entity of the bank as a whole is preserved, thereby carrying with it the liability of the institution as a whole on such obligations as it may be under. On the other hand, in cases in which the Article provides a number of time limits for different types of action by banks, if a branch functions as a separate bank, it should have the time limits available to a separate bank. Similarly if in its relations to customers a branch functions as a separate bank, notices and orders with respect to accounts of customers of the branch should be given at the branch. For example, whether a branch has notice sufficient to affect its status as a holder in due course of an item taken by it should depend upon what notice that branch has received with respect to the item. Similarly the receipt of a stop payment order at one branch should not be notice to another branch so as to impair the right of the second branch to be a holder in due course of the item, although in circumstances in which ordinary care requires the communication of a notice or order to the proper branch of a bank, the notice or order would be effective at the proper branch from the time it was or should have been received. See Section ~~1-201(27)~~1-202.

* * *

**Cross References:**

Sections ~~3-504, 4-102(2)~~1-202, 4-106, 4-207, 4-208.

* * *

**Section 4-108. Time of Receipt of Items**

* * *

**Official Comment**

* * *

**Section 4-109. Delays**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. Subsection (b) is another escape clause from time limits. This clause operates not only with respect to time limits imposed by the Article itself but also time limits imposed by special instructions, by agreement or by Federal regulations or operating circulars, clearing-house rules or the like. The latter time limits are "permitted" by the Code. For example, a payor bank that fails to make timely return of a dishonored item may be accountable for the amount of the item. Subsection (b) excuses a bank from this liability when its failure to meet its midnight deadline resulted from, for example, a computer breakdown that was beyond the control of the bank, so long as the bank exercised the degree of diligence that the circumstances required. In *Port City State Bank v. American ~~National~~ Nat'l Bank*, 486 F.2d 196 (10th Cir. 1973), the court held that a bank exercised sufficient diligence to be excused under this subsection. If delay is sought to be excused under this subsection, the bank has the burden of proof on the issue of whether it exercised "such diligence as the circumstances require." The subsection is consistent with Regulation CC, Section 229.38(e).

**Cross References:**

Sections ~~3-103(2), 3-503, 3-506, 4-102(1),~~ 4-103, ~~4-104,~~ 4-202~~(2)~~(b), ~~4-212,~~ 4-213, 4-214, 4-301, 4-302.

* * *

**Section 4-110. Electronic Presentment**

* * *

**Official Comment**

1. ~~"~~An "agreement for electronic presentment" refers to an agreement under which presentment may be made to a payor bank by a presentment notice rather than by presentment of the item. Under imaging technology now under development, the presentment notice might be an image of the item. The electronic presentment agreement may provide that the item may be retained by a depositary bank, other collecting bank, or even a customer of the depositary bank, or it may provide that the item will follow the presentment notice. The identifying characteristic of an electronic presentment agreement is that presentment occurs when the presentment notice is received. ~~"~~An "agreement for electronic presentment" does not refer to the common case of retention of items by payor banks because the item itself is presented to the payor bank in these cases. Payor bank check retention is a matter of agreement between payor banks and their customers. Provisions on payor bank check retention are found in Section 4-406(b).

* * *

**Cross References:**

Sections 4-103, 4-406.

**Section 4-111. Statute of Limitations**

* * *

**Official Comment**

* * *

**Cross References:**

Section 3-118.

**PART 2**

**COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS**

**Section 4-201. Status of Collecting Bank as Agent and Provisional Status of Credits; Applicability of Article; Item Indorsed "Pay Any Bank"**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

**Cross References:**

Sections ~~3-206, 3-208,~~ 3-207, 4-103, 4-201, 4-206, ~~4-208,~~ 4-210, ~~4-212,~~ 4-213, 4-214, 4-215, 4-216, 4-302.

**Definitional Cross References:**

"Bank". Section 1-201.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Depositary bank". Section 4-105.
"Holder". Section 1-201.
"Item". Section 4-104.
"Indorsement~~s~~". Sections ~~3-202,~~ 3-204, 3-205 and 3-206.
"Person". Section 1-201.
"Settle". Section 4-104.

## Section 4-202. Responsibility for Collection or Return; When Action Timely

* * *

### Official Comment

* * *

**Purposes:**

1. Subsection (a) states the basic responsibilities of a collecting bank. Of course, under Section ~~1-203~~1-304 a collecting bank is subject to the standard requirement of good faith. By subsection (a) it must also use ordinary care in the exercise of its basic collection tasks. By Section 4-103(a) neither requirement may be disclaimed.

* * *

**Cross References:**

Sections ~~1-203~~1-304, 3-501, 4-103, ~~4-107,~~ 4-108, 4-109, 4-204, 4-212, 4-301, and 4-302.

**Definitional Cross References:**

"Collecting bank". Section 4-105.
"Depositary bank". Section 4-105.
"Documentary draft". Section 4-104.
"Item". Section 4-104.
"Midnight deadline". Section 4-104.
"Presentment". ~~Article 3, Part 5~~Section 3-501.
~~"Protest". Section 3-509.~~

## Section 4-203. Effect of Instructions

* * *

### Official Comment

* * *

**Cross References:**

Sections ~~3-205,~~ 3-206, ~~3-419, 3-603,~~ 3-420, 4-103~~(1)~~(a) ~~and 4-205~~.

**Definitional Cross References:**

"Collecting bank". Section 4-105.
"Restrictive indorsement". Section ~~3-205~~3-206.

## Section 4-204. Methods of Sending and Presenting; Sending Directly to Payor Bank

* * *

**Official Comment**

* * *

**Cross References:**

Sections ~~3-504,4-501 and 4-502~~3-501, 4-203.

* * *

**Section 4-205. Depositary Bank Holder of Unindorsed Item**

* * *

**Official Comment**

* * *

**Purposes:**

Section 3-201(b) provides that negotiation of an instrument payable to order requires indorsement by the holder. The rule of former Section 4-205(1) was that the depositary bank may supply a missing indorsement of its customer unless the item contains the words "payee's indorsement required" or the like. The cases have differed on the status of the depositary bank as a holder if it fails to supply its customer's indorsement. *Marine Midland Bank~~, N.A.~~ v. Price, Miller, Evans & Flowers,* 446 N.Y.S.2d 797 (~~N.Y.App. Div.4th Dept~~N.Y. App. Div. 1981), *rev'd*, 455 N.Y.S.2d 565 (N.Y. 1982). It is common practice for depositary banks to receive unindorsed checks under so-called "lock-box" agreements from customers who receive a high volume of checks. No function would be served by requiring a depositary bank to run these items through a machine that would supply the customer's indorsement except to afford the drawer and the subsequent banks evidence that the proceeds of the item reached the customer's account. Paragraph (1) provides that the depositary bank becomes a holder when it takes the item for deposit if the depositor is a holder. Whether it supplies the customer's indorsement is immaterial. Paragraph (2) satisfies the need for a receipt of funds by the depositary bank by imposing on that bank a warranty that it paid the customer or deposited the item to the customer's account. This warranty runs not only to collecting banks and to the payor bank or nonbank drawee but also to the drawer, affording protection to these parties that the depositary bank received the item and applied it to the benefit of the holder.

**Cross References:**

Sections ~~3-205, 3-206, 3-419, 3-603, 4-203~~3-201, 3-302.

**Definitional Cross References:**

"Account". Section 4-104.
"Collecting bank~~.~~". Section 4-105.

"Customer.". Section 4-104.
"Depositary bank.". Section 4-105.
"Drawer". Section 3-103.
"Holder". Section 1-201.
"Holder in due course". Section 3-302.
"Intermediary bank.". Section 4-105.
"Item.". Section 4-104.
"Payor bank." Section 4-105.
~~"Restrictive indorsement." Section 3-205.~~

**Section 4-206. Transfer Between Banks**

* * *

**Official Comment**

* * *

**Cross References:**

Section~~s~~ 3-201~~, 3-202~~.

* * *

**Section 4-207. Transfer Warranties**

* * *

**Official Comment**

* * *

**Cross References:**

Sections ~~3-201, 3-414, 3-417, 3-418, 4-206,~~ 3-115, 3-305, 3-407, 3-416, 4-208, 4-209 ~~and 4-406~~.

**Definitional Cross References:**

"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Draft". Section 3-104.
"Genuine". Section 1-201.
"Good faith". Section 1-201.
"Holder". Section 1-201.
"Holder in due course". Section 3-302.
"Insolvency proceedings". Section 1-201.
"Item". Section 4-104.
"Party". Section 1-201.
"Payor bank". Section 4-105.

"Person". Section 1-201.
"Presentment". Section 3-504.
~~"Protest". Section 3-509.~~
"Unauthorized signature". Section 1-201.

**Section 4-208. Presentment Warranties**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 3-104, 3-404, 3-405, 3-407, 3-416, 3-417.

**Section 4-209. Encoding and Retention Warranties**

* * *

**Official Comment**

* * *

2. A misencoding of the amount on the MICR line is not an alteration under Section 3-407(a) which defines alteration as changing the contract of the parties. If a drawer wrote a check for $2,500 and the depositary bank encoded $25,000 on the MICR line, the payor bank could debit the drawer's account for only $2,500. This subsection would allow the payor bank to hold the depositary bank liable for the amount paid out over $2,500 without first pursuing the person who received payment. Intervening collecting banks would not be liable to the payor bank for the depositary bank's error. If a drawer wrote a check for $25,000 and the depositary bank encoded $2,500, the payor bank becomes liable for the full amount of the check. The payor bank's rights against the depositary bank depend on whether the payor bank has suffered a loss. Since the payor bank can debit the drawer's account for $25,000, the payor bank has a loss only to the extent that the drawer's account is less than the full amount of the check. There is no requirement that the payor bank pursue collection against the drawer beyond the amount in the drawer's account as a condition to the payor bank's action against the depositary bank for breach of warranty. See *Georgia Railroad Bank & Trust Co. v. First ~~National~~ Nat'l Bank & Trust*, 229 S.E.2d 482 (Ga. Ct. App. 1976), *aff'd*, 235 S.E.2d 1 (Ga. 1977), and *First ~~National~~ Nat'l Bank of Boston v. Fidelity Bank~~, National Association~~*, 724 ~~F.Supp.~~F. Supp. 1168 (E.D. Pa. 1989).

* * *

**Cross References:**

Sections 3-407, 4-110.

**Section 4-210. Security Interest of Collecting Bank in Items, Accompanying**

**Documents and Proceeds**

* * *

**Official Comment**

* * *

**Purposes:**

1. Subsection (a) states a rational rule for the interest of a bank in an item. The customer of the depositary bank is normally the owner of the item and the several collecting banks are agents of the customer (Section 4-201). A collecting agent may properly make advances on the security of paper held for collection, and acquires at common law a possessory lien for these advances. Subsection (a) applies an analogous principle to a bank in the collection chain which extends credit on items in the course of collection. The bank has a security interest to the extent stated in this section. To the extent of its security interest it is a holder for value (Sections 3-303, 4-211) and a holder in due course if it satisfies the other requirements for that status (Section 3-302). Subsection (a) does not derogate from the banker's general common law lien or right of setoff against indebtedness owing in deposit accounts. See Section ~~1-103~~1-103(b). Rather subsection (a) specifically implements and extends the principle as a part of the bank collection process.

* * *

**Cross References:**

Sections 1-103, 3-302, 3-303, ~~4-201, 4-209,~~ 4-211, 9-203~~(1)(b)~~(b)(3)(A) ~~and 9-302~~.

* * *

**Section 4-211. When Bank Gives Value for Purposes of Holder in Due Course**

* * *

**Official Comment**

* * *

**Purpose:**

The section completes the thought of the previous section and makes clear that a security interest in an item is "value" for the purpose of determining the holder's status as a holder in due course. The provision is in accord with the prior law (N.I.L. Section 27) and with Article 3 (Section 3-303). The section does not prescribe a security interest under Section 4-210 as a test of "value" generally because the meaning of "value" under other Articles is adequately defined in Section ~~1-201~~1-204.

**Cross References:**

Sections ~~1-201~~1-204, 3-302, 3-303, ~~and 4-208~~4-210.

**Definitional Cross References:**

"Bank". Section 1-201.
"Holder in due course". Section 3-302.
"Item". Section 4-104.
"Security interest". Section 1-201.
"Value". Section 1-204.

**Section 4-212. Presentment by Notice of Item Not Payable by, Through, or at a Bank; Liability of Drawer or Indorser**

* * *

**Official Comment**

* * *

**Cross References:**

Section~~s~~ 3-501 ~~through 3-508, 4-501 and 4-502~~.

* * *

**Section 4-213. Medium and Time of Settlement by Bank**

* * *

**Official Comment**

* * *

**Cross Reference:**

Sections ~~4-213~~4-215, 4A-406.

**Definitional Cross References:**

"Account". Section 4-104.
"Bank". Section 1-201.
"Clearing house". Section 4-104.
"Collecting bank". Section 4-105.
"Item". Section 4-104.
"Midnight deadline". Section 4-104.
"Money". Section 1-201.
"Payor bank". Section 4-105.
"Person". Section 1-201.

~~"Remitting bank". Section 4-105.~~
"Settle". Section 4-104.

**Section 4-214. Right of Charge-Back or Refund; Liability of Collecting Bank; Return of Item**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. The right of charge-back or refund exists if a collecting bank has made a provisional settlement for an item with its customer but terminates if and when a settlement received by the bank for the item is or becomes final. If the bank fails to receive such a final settlement the right of charge-back or refund must be exercised promptly after the bank learns the facts. The right exists (if so promptly exercised) whether or not the bank is able to return the item. The second sentence of subsection (a) adopts the view of *Appliance Buyers Credit Corp. v. Prospect ~~National~~ Nat'l Bank*, 708 F.2d 290 (7th Cir. 1983), that if the midnight deadline for returning an item or giving notice is not met, a collecting bank loses its rights only to the extent of damages for any loss resulting from the delay.

4. Subsection (b) states when an item is returned by a collecting bank. Regulation CC, Section 229.31 preempts this subsection with respect to checks by allowing direct return to the depositary bank. Because a returned check may follow a different path than in forward collection, settlement given for the check is final and not provisional except as between the depositary bank and its customer. Regulation CC Section 229.36(d). See also Regulation~~s~~ CC Sections 229.31(c) and 229.32(b). Thus owing to the federal preemption, this subsection applies only to noncheck items.

5. The rule of subsection (d) relating to charge-back (as distinguished from claim for refund) applies irrespective of the cause of the nonpayment, and of the person ultimately liable for nonpayment. Thus charge-back is permitted even if nonpayment results from the depositary bank's own negligence. Any other rule would result in litigation based upon a claim for wrongful dishonor of other checks of the customer, with potential damages far in excess of the amount of the item. Any other rule would require a bank to determine difficult questions of fact. The customer's protection is found in the general obligation of good faith (Sections ~~1-203~~1-304 and 4-103). If bad faith is established the customer's recovery "includes other damages, if any, suffered by the party as a proximate consequence" (Section 4-103(e); see also Section 4-402).

* * *

**Cross References:**
Sections ~~1-203~~1-304, 3-107, 4-103, ~~4-211(3), 4-213(2) and (3),~~ 4-301, 4-402.

* * *

**Section 4-215. Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal**

* * *

**Official Comment**

* * *

**Cross References:**

Sections ~~3-418, 4-107,~~ 4-104, 4-109, 4-201, ~~4-211, 4-212,~~ 4-213, ~~4-214,~~ 4-215, 4-216, 4-301, 4-302, 4-303.

**Definitional Cross References:**

"Account". Section 4-104.
"Agreement". Section 1-201.
"Banking day". Section 4-104.
"Clearing house". Section 4-104.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Depositary bank". Section 4-105.
"Item". Section 4-104.
"Money". Section 1-201.
"Notice". Section ~~1-201~~1-202.
"Payor bank". Section 4-105.
"Presenting bank". Section 4-105.
"Settle~~ment~~". Section 4-104.

**Section 4-216. Insolvency and Preference**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. It is recognized that in view of *Jennings v. United States Fidelity & Guaranty Co.*, 294 U.S. 216~~, 55 S.Ct. 394, 79 L.Ed. 869, 99 A.L.R. 1248~~ (1935), amendment of the National Bank Act would be necessary to have this section apply to national banks. But there is no reason why it should not apply to others. See Section ~~1-108~~1-105.

**Cross References:**

Sections ~~1-108~~1-105~~, 4-211(3) and 4-213~~.

**Definitional Cross References:**

"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Item". Section 4-104.
"Payor bank". Section 4-105.
"Presenting bank". Section 4-105.
"Settle~~ment~~". Section 4-104.
"Suspends payment". Section 4-104.

## PART 3

## COLLECTION OF ITEMS: PAYOR BANKS

### Section 4-301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor; Return of Items by Payor Bank

* * *

**Official Comment**

* * *

**Purposes:**

* * *

6. Subsection (d) leaves banks free to agree upon the manner of returning items but establishes a precise time when an item is "returned." For definition of "sent" as used in paragraphs (1) and (2) see Section ~~1-201(38)~~1-201(b)(36). Obviously the subsection assumes that the item has not been "finally paid" under Section 4-215(a). If it has been, this provision has no operation.

7. The fact that an item has been paid under proposed Section 4-215 does not preclude the payor bank from asserting rights of restitution or revocation under Section 3-418. *~~National~~ Nat'l Savings ~~and~~ & Trust Co. v. Park Corp.*, 722 F.2d 1303 (6th Cir. 1983), *cert. denied,* 466 U.S. 939 (1984), is the correct interpretation of the present law on this issue.

8. Paragraph (a)(2) is designed to facilitate electronic check-processing by authorizing the payor bank to return an image of the item instead of the actual item. It applies only when the

payor bank and the party to which the return has been made have agreed that the payor bank can make such a return and when the return complies with the agreement. The purpose of the paragraph is to prevent third parties (such as the depositor of the check) from contending that the payor bank missed its midnight deadline because it failed to return the actual item in a timely manner. If the payor bank missed its midnight deadline, payment would have become final under Section 4-215 and the depositary bank would have lost its right of chargeback under Section 4-214. Of course, the depositary bank might enter into an agreement with its depositor to resolve that problem, but it is not clear that agreements by banks with their customers can resolve all such issues. In any event, paragraph (a)(2) should eliminate the need for such agreements. The provision rests on the premise that it is inappropriate to penalize a payor bank simply because it returns the actual item a few business days after the midnight deadline ~~of~~ if the payor bank sent notice before that deadline to a collecting bank that had agreed to accept such notices.

* * *

**Cross References:**

Sections 1-201, ~~3-508,~~3-418, 3-503, 4-213, 4-214, 4-215, 4-301, 4-302.

**Definitional Cross References:**

"Banking day". Section 4-104.
"Clearing house". Section 4-104.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Documentary draft". Section 4-104.
"Item". Section 4-104.
"Midnight deadline". Section 4-104.
"Notice of dishonor". Section 3-508.
"Payor bank". Section 4-105.
"Presenting bank". Section 4-105.
"Sent". Section ~~1-201(38)~~1-201.
"Settlement". Section 4-104.

**Section 4-302. Payor's Bank Responsibility for Late Return of Item**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. Subsection (b) is an elaboration of the deleted introductory language of former Section 4-302: "In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of Section 4-207), settlement effected or the like ... ." A payor bank can defend

an action against it based on accountability by showing that the item contained a forged indorsement or a fraudulent alteration. Subsection (b) drops the ambiguous "or the like" language and provides that the payor bank may also raise the defense of fraud. Decisions that hold an accountable bank's liability to be "absolute" are rejected. A payor bank that makes a late return of an item should not be liable to a defrauder operating a check kiting scheme. In *Bank of Leumi Trust Co. v. Bally's Park Place Inc.*, 528 ~~F.Supp.~~ F. Supp. 349 (S.D.N.Y. 1981), and *American ~~National~~ Nat'l Bank v. Foodbasket*, 497 P.2d 546 (Wyo. 1972), banks that were accountable under Section 4-302 for missing their midnight deadline were successful in defending against parties who initiated collection knowing that the check would not be paid. The "settlement effected" language is deleted as unnecessary. If a payor bank is accountable for an item it is liable to pay it. If it has made final payment for an item, it is no longer accountable for the item.

**Cross Reference:** Sections 4-207, 4-208, 4-213, 4-215, 4-301, 4-302.

* * *

**Section 4-303. When Items Subject to Notice, Stop-Payment Order, Legal Process, or Setoff; Order in Which Items May Be Charged or Certified**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

6. In the case of knowledge, notice, stop-payment orders and legal process the effective time for determining whether they were received too late to affect the payment of an item and a charge to the customer's account by reason of such payment, is receipt plus a reasonable time for the bank to act on any of these communications. Usually a relatively short time is required to communicate to the accounting department advice of one of these events but certainly some time is necessary. Compare Sections ~~1-201(27)~~1-202 and 4-403. In the case of setoff the effective time is when the setoff is actually made.

* * *

**Cross References:**

Sections 1-202, ~~3-410, 3-411, 4-213(1),~~ 4-108, 4-301, 4-302, 4-403, 4-405.

**Definitional Cross References:**

"Accepted". Section 3-410.
"Account". Section 4-104.

"Agreement". Section 1-201.
"Certified". Section 3-411,
"Clearing house". Section 4-104.
"Customer". Section 4-104.
"Item". Section 4-104.
"Notice". Section ~~1-201~~1-202.
"Payor bank". Section 4-105.
"Settle". Section 4-104.

## PART 4

## RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

### Section 4-401. When Bank May Charge Customer's Account

* * *

### Official Comment

* * *

**Purposes:**

1. An item is properly payable from a customer's account if the customer has authorized the payment and the payment does not violate any agreement that may exist between the bank and its customer. For an example of a payment held to violate an agreement with a customer, see *Torrance ~~National~~ Nat'l Bank v. Enesco ~~Federal~~ Fed. Credit Union*, 285 P.2d 737 (~~Cal.App.~~Cal. Ct. App. 1955). An item drawn for more than the amount of a customer's account may be properly payable. Thus under subsection (a) a bank may charge the customer's account for an item even though payment results in an overdraft. An item containing a forged drawer's signature or forged indorsement is not properly payable. Concern has arisen whether a bank may require a customer to execute a stop-payment order when the customer notifies the bank of the loss of an unindorsed or specially indorsed check. Since such a check cannot be properly payable from the customer's account, it is inappropriate for a bank to require stop-payment order in such a case.

* * *

3. Subsection (c) is added because the automated check collection system cannot accommodate postdated checks. A check is usually paid upon presentment without respect to the date of the check. Under the former law, if a payor bank paid a postdated check before its stated date, it could not charge the customer's account because the check was not "properly payable." Hence, the bank might have been liable for wrongfully dishonoring subsequent checks of the drawer that would have been paid had the postdated check not been prematurely paid. Under subsection (c) a customer wishing to postdate a check must notify the payor bank of its postdating in time to allow the bank to act on the customer's notice before the bank has to commit itself to pay the check. If the bank fails to act on the customer's timely notice, it may be liable for damages for the resulting loss which may include damages for dishonor of subsequent items. This Act does not regulate fees that banks charge their customers for a notice of

postdating or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees. *Perdue v. Crocker ~~National~~ Nat'l Bank*, ~~38 Cal.3d 913~~702 P.2d 503 (Cal. 1985) (unconscionability); *Best v. United Bank of Oregon*, 739 P.2d 554, 562-566 (Or. 1987) (good faith and fair dealing). In addition, Section ~~1-203~~1-304 provides that every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

* * *

**Cross References:**

Sections ~~3-115 and~~ 1-304, 3-407, 4-303, 4-402, 4-403.

* * *

**Section 4-402. Bank's Liability to Customer for Wrongful Dishonor; Time of Determining Insufficiency of Account**

* * *

**Official Comment**

* * *

**Purposes:**

1. Subsection (a) states positively what has been assumed under the original Article: that if a bank fails to honor a properly payable item it may be liable to its customer for wrongful dishonor. Under subsection (b) the payor bank's wrongful dishonor of an item gives rise to a statutory cause of action. Damages may include consequential damages. Confusion has resulted from the attempts of courts to reconcile the first and second sentences of former Section 4-402. The second sentence implied that the bank was liable for some form of damages other than those proximately caused by the dishonor if the dishonor was other than by mistake. But nothing in the section described what these noncompensatory damages might be. Some courts have held that in distinguishing between mistaken dishonors and nonmistaken dishonors, the so-called "trader" rule has been retained that allowed a "merchant or trader" to recover substantial damages for wrongful dishonor without proof of damages actually suffered. Comment 3 to former Section 4-402 indicated that this was not the intent of the drafters. White & Summers, Uniform Commercial Code, Section 18-4 (1988), states: "The negative implication is that when wrongful dishonors occur not 'through mistake' but willfully, the court may impose damages greater than 'actual damages' ... . Certainly the reference to 'mistake' in the second sentence of 4-402 invites a court to adopt the relevant pre-Code distinction." Subsection (b) by deleting the reference to mistake in the second sentence precludes any inference that Section 4-402 retains the "trader" rule. Whether a bank is liable for noncompensatory damages, such as punitive damages, must be decided by Section 1-103 and Section ~~1-106~~1-305 ("by other rule of law").

* * *

5. Section 4-402 has been construed to preclude an action for wrongful dishonor by a plaintiff other than the bank's customer. *Loucks v. Albuquerque ~~National~~ Nat'l Bank*, 418 P.2d 191 (~~N.Mex.~~N.M. 1966). Some courts have allowed a plaintiff other than the customer to sue when the customer is a business entity that is one and the same with the individual or individuals operating it. *Murdaugh Volkswagen, Inc. v. First ~~National~~ Nat'l Bank*, 801 F.2d 719 (4th Cir. 1986) and *Karsh v. American City Bank*, ~~113 Cal.App.3d 419,~~ 169 ~~Cal.Rptr.~~Cal. Rptr. 851 (Ct. App. 1980). However, where the wrongful dishonor impugns the reputation of an operator of the business, the issue is not merely, as the court in *Koger v. East First ~~National~~ Nat'l Bank*, 443 ~~So.2d~~So. 2d 141 (~~Fla.App.~~Fla. Ct. App. 1983), put it, one of a literal versus a liberal interpretation of Section 4-402. Rather the issue is whether the statutory cause of action in Section 4-402 displaces, in accordance with Section 1-103, any cause of action that existed at common law in a person who is not the customer whose reputation was damaged. See *Marcum v. Security Trust ~~and~~ & Savings Co.*, ~~221 Ala. 419,~~ 129 So.74 (Ala. 1930). While Section 4-402 should not be interpreted to displace the latter cause of action, the section itself gives no cause of action to other than a "customer," however that definition is construed, and thus confers no cause of action on the holder of a dishonored item. *First ~~American~~ Am. ~~National~~ Nat'l Bank v. Commerce Union Bank*, 692 S.W.2d 642 (~~Tenn.App.~~Tenn. Ct. App. 1985).

**Cross References:**

Sections 1-103, 1-305, 4-103, 4-402.

* * *

**Section 4-403. Customer's Right to Stop Payment; Burden of Proof of Loss**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

7. A payment in violation of an effective direction to stop payment is an improper payment, even though it is made by mistake or inadvertence. Any agreement to the contrary is invalid under Section 4-103(a) if in paying the item over the stop-payment order the bank has failed to exercise ordinary care. An agreement to the contrary which is imposed upon a customer as part of a standard form contract would have to be evaluated in the light of the general obligation of good faith. Sections ~~1-203~~1-304 and 4-104(c). The drawee is, however, entitled to subrogation to prevent unjust enrichment (Section 4-407); retains common law defenses, e.g., that by conduct in recognizing the payment the customer has ratified the bank's action in paying over a stop-payment order (Section 1-103); and retains common law rights, e.g., to recover money paid under a mistake under Section 3-418. It has sometimes been said that payment cannot be stopped against a holder in due course, but the statement is inaccurate. The payment can be stopped but the drawer remains liable on the instrument to the holder in due course (Sections 3-305, 3-414)

and the drawee, if it pays, becomes subrogated to the rights of the holder in due course against the drawer. Section 4-407. The relationship between Sections 4-403 and 4-407 is discussed in the comments to Section 4-407. Any defenses available against a holder in due course remain available to the drawer, but other defenses are cut off to the same extent as if the holder were bringing the action.

**Cross References:**

~~Point 3: Sections 3-603(1), 4-405.~~
~~Point 4: Section 3-121.~~
~~Point 5: Sections 3-411 and 4-303.~~
~~Point 8:~~ Sections 1-103, 1-304, 3-305, ~~3-413,~~ 3-411, 3-414, 3-418, 3-602, 4-103, 4-104, 4-106, 4-303, 4-402, 4-403, 4-405, ~~and~~ 4-407.

* * *

**Section 4-404. Bank Not Obliged to Pay Check More Than Six Months Old**

* * *

**Official Comment**

* * *

**Cross References:** Sections ~~3-411~~3-409, ~~and~~ 3-413.

* * *

**Section 4-405. Death or Incompetence of Customer**

* * *

**Official Comment**

* * *

**Section 4-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration**

* * *

**Official Comment**

* * *

**Purposes:**

1. Under subsection (a), if a bank that has paid a check or other item for the account

of a customer makes available to the customer a statement of account showing payment of the item, the bank must either return the item to the customer or provide a description of the item sufficient to allow the customer to identify it. Under subsection (c), the customer has a duty to exercise reasonable promptness in examining the statement or the returned item to discover any unauthorized signature of the customer or any alteration and to promptly notify the bank if the customer should reasonably have discovered the unauthorized signature or alteration.

* * *

Under subsection (a), a statement of account must provide information "sufficient to allow the customer reasonably to identify the items paid." If the bank supplies its customer with an image of the paid item, it complies with this standard. But a safe harbor rule is provided. The bank complies with the standard of providing "sufficient information" if "the item is described by item number, amount, and date of payment." This means that the customer's duties under subsection (c) are triggered if the bank sends a statement of account complying with the safe harbor rule without returning the paid items. A bank does not have to return the paid items unless it has agreed with the customer to do so. Whether there is such an agreement depends upon the particular circumstances. See Section ~~1-201(3)~~1-201(b)(3). If the bank elects to provide the minimum information that is "sufficient" under subsection (a) and, as a consequence, the customer could not "reasonably have discovered the unauthorized payment," there is no preclusion under subsection (d). If the customer made a record of the issued checks on the check stub or carbonized copies furnished by the bank in the checkbook, the customer should usually be able to verify the paid items shown on the statement of account and discover any unauthorized or altered checks. But there could be exceptional circumstances. For example, if a check is altered by changing the name of the payee, the customer could not normally detect the fraud unless the customer is given the paid check or the statement of account discloses the name of the payee of the altered check. If the customer could not "reasonably have discovered the unauthorized payment" under subsection (c) there would not be a preclusion under subsection (d).

* * *

2. Subsection (d) states the consequences of a failure by the customer to perform its duty under subsection (c) to report an alteration or the customer's unauthorized signature. Subsection (d)(1) applies to the unauthorized payment of the item to which the duty to report under subsection (c) applies. If the bank proves that the customer "should reasonably have discovered the unauthorized payment" (See Comment 1) and did not notify the bank, the customer is precluded from asserting against the bank the alteration or the customer's unauthorized signature if the bank proves that it suffered a loss as a result of the failure of the customer to perform its subsection (c) duty. Subsection (d)(2) applies to cases in which the customer fails to report an unauthorized signature or alteration with respect to an item in breach of the subsection (c) duty (See Comment 1) and the bank subsequently pays other items of the customer with respect to which there is an alteration or unauthorized signature of the customer and the same wrongdoer is involved. If the payment of the subsequent items occurred after the customer has had a reasonable time (not exceeding 30 days) to report with respect to the first item and before the bank received notice of the unauthorized signature or alteration of the first item, the customer is precluded from asserting the alteration or unauthorized signature with respect to the subsequent items.

* * *

Subsection (d)(2) changes former subsection (2)(b) by adopting a 30-day period in place of a 14-day period. Although the 14-day period may have been sufficient when the original version of Article 4 was drafted in the 1950s, given the much greater volume of checks at the time of the revision, a longer period was viewed as more appropriate. The rule of subsection (d)(2) follows pre-Code case law that payment of an additional item or items bearing an unauthorized signature or alteration by the same wrongdoer is a loss suffered by the bank traceable to the customer's failure to exercise reasonable care (See Comment 1) in examining the statement and notifying the bank of objections to it. One of the most serious consequences of failure of the customer to comply with the requirements of subsection (c) is the opportunity presented to the wrongdoer to repeat the misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine the statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items. Hence, the rule of subsection (d)(2) is prescribed, and to avoid dispute a specific time limit, 30 days, is designated for cases to which the subsection applies. These considerations are not present if there are no losses resulting from the payment of additional items. In these circumstances, a reasonable period for the customer to comply with its duties under subsection (c) would depend on the circumstances (Section ~~1-204(2)~~1-205(a)) and the subsection (d)(2) time limit should not be imported by analogy into subsection (c).

3. Subsection (b) applies if the items are not returned to the customer. Check retention plans may include a simple payor bank check retention plan or the kind of check retention plan that would be authorized by a truncation agreement in which a collecting bank or the payee may retain the items. Even after agreeing to a check retention plan, a customer may need to see one or more checks for litigation or other purposes. The customer's request for the check may always be made to the payor bank. Under subsection (b) retaining banks may destroy items but must maintain the capacity to furnish legible copies for seven years. A legible copy may include an image of an item. This Act does not define the length of the reasonable period of time for a bank to provide the check or copy of the check. What is reasonable depends on the capacity of the bank and the needs of the customer. This Act does not specify sanctions for failure to retain or furnish the items or legible copies; this is left to other laws regulating banks. See Comment 3 to Section 4-101. Moreover, this Act does not regulate fees that banks charge their customers for furnishing items or copies or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees. *Perdue v. Crocker ~~National~~ Nat'l Bank*, ~~38 Cal.3d 913~~702 P.2d 503 (Cal. 1985) (unconscionability); *Best v. United Bank of Oregon*, 739 P.2d 554, 562-566 (Or. 1987) (good faith and fair dealing). In addition, Section ~~1-203~~1-304 provides that every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

* * *

**Cross References:**

Sections ~~3-404, 3-405, 3-406, 3-407, 3-417 and 4-207~~1-201, 1-205, 1-304, 3-103, 3-404, 3-405, 3-406, 4-104, 4-111, 4-208, 4-406.

**Definitional Cross References:**

"Alteration". Section 3-407.
"Bank". Section 1-201.
"Collecting bank". Section 4-105.
"Customer". Section 4-104.
"Good faith". Section 1-201.
"Indorsement". Section 3-204.
"Item". Section 4-104.
"Ordinary care". Section 3-103
"Payor bank". Section 4-105.
"Send". Section 1-201.
"Unauthorized signature". Section 1-201.

**Section 4-407. Payor Bank's Right to Subrogation on Improper Payment**

* * *

**Official Comment**

* * *

**Cross Reference:** Sections 1-103, 4-403.

* * *

**PART 5**

**COLLECTION OF DOCUMENTARY DRAFTS**

**Section 4-501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 1-201, 4-104.

~~In Article 4: Sections 4-201, 4-202, 4-203, 4-204 and 4-210.~~
~~In Article 5: Sections 5-110, 5-111, 5-112 and 5-113.~~

* * *

**Section 4-502. Presentment of "On Arrival" Drafts**

* * *

**Official Comment**

* * *

~~**Cross References:**~~

~~In Article 4: Sections 4-202 and 4-203.~~
~~In Article 5: Section 5-112.~~

* * *

**Section 4-503. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. If the draft is drawn under a letter of credit, Article 5 controls. See Sections ~~5-109~~5-108 through ~~5-114~~5-110.

**Cross References:**

~~Point 1. Section 2-514; see also Section 4-504.~~
~~Point 2. Article 5, especially~~ Sections ~~5-109~~2-514, 4-504, 5-108 through ~~5-114~~5-110.

* * *

**Section 4-504. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses**

* * *

**Official Comment**

* * *

**Cross References:**

Sections ~~4-503 and~~ 2-706.

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 4A – FUNDS TRANSFERS

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**
**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

*WITH COMMENTS*

As adopted in 1989 and revised in: (i) 1994, in connection with PEB Commentary No. 13; (ii) 2001, in connection with the revision of Article 1; (iii) 2012, in connection with an amendment to Section 4A-108; and (iv) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

**UNIFORM COMMERCIAL CODE**
**ARTICLE 4A. FUNDS TRANSFERS**

**PREFATORY NOTE**

* * *

International ~~Transfers~~transfers.

The major international legal document dealing with the subject of electronic funds transfers is the Model Law on International Credit Transfers adopted in 1992 by the United Nations Commission on International Trade Law. It covers basically the same type of transaction as does Article 4A, although it requires the funds transferred to have an international component. The Model Law and Article 4A basically live together in harmony, but to the extent there are differences they must be recognized and, to the extent possible, avoided or adjusted by agreement. See PEB Commentary No. 13.

**UNIFORM COMMERCIAL CODE**

**ARTICLE 4A – FUNDS TRANSFERS**

**PART 1**

**SUBJECT MATTER AND DEFINITIONS**

**Section 4A-101. Short Title**

* * *

**Section 4A-102. Subject Matter**

* * *

**Official Comment**

* * *

**Section 4A-103. Payment Order – Definitions**

* * *

**Official Comment**

* * *

**Section 4A-104. Funds Transfer – Definitions**

* * *

**Official Comment**

* * *

**Section 4A-105. Other Definitions**

* * *

**Official Comment**

* * *

2. Funds transfer business is frequently transacted by banks outside of general banking hours. Thus, the definition of banking day in Section ~~4-104(1)(c)~~4-104(a)(3) cannot be used to describe when a bank is open for funds transfer business. Subsection (a)(4) defines a new term, "funds transfer business day," which is applicable to Article 4A. The definition states, "is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments

of payment orders." In some cases it is possible to electronically transmit payment orders and other communications to a receiving bank at any time. If the receiving bank is not open for the processing of an order when it is received, the communication is stored in the receiving bank's computer for retrieval when the receiving bank is open for processing. The use of the conjunctive makes clear that the defined term is limited to the period during which all functions of the receiving bank can be performed, i.e., receipt, processing, and transmittal of payment orders, cancellations and amendments.

* * *

**Section 4A-106. Time Payment Order Is Received**

* * *

**Official Comment**

* * *

**Section 4A-107. Federal Reserve Regulations and Operating Circulars**

* * *

**Official Comment**

* * *

**Section 4A-108. Relationship to Electronic Fund Transfer Act**

* * *

**Official Comment**

* * *

## PART 2

## ISSUE AND ACCEPTANCE OF PAYMENT ORDER

**Section 4A-201. Security Procedure**

* * *

**Official Comment**

* * *

**Section 4A-202. Authorized and Verified Payment Orders**

* * *

**Official Comment**

* * *

**Section 4A-203. Unenforceability of Certain Verified Payment Orders**

* * *

**Official Comment**

1. Some person will always be identified as the sender of a payment order. Acceptance of the order by the receiving bank is based on a belief by the bank that the order was authorized by the person identified as the sender. If the receiving bank is the beneficiary's bank acceptance means that the receiving bank is obliged to pay the beneficiary. If the receiving bank is not the beneficiary's bank, acceptance means that the receiving bank has executed the sender's order and is obliged to pay the bank that accepted the order issued in execution of the sender's order. In either case the receiving bank may suffer a loss unless it is entitled to enforce payment of the payment order that it accepted. If the person identified as the sender of the order refuses to pay on the ground that the order was not authorized by that person, what are the rights of the receiving bank? In the absence of a statute or agreement that specifically addresses the issue, the question usually will be resolved by the law of agency. In some cases, the law of agency works well. For example, suppose the receiving bank executes a payment order given by means of a letter apparently written by a corporation that is a customer of the bank and apparently signed by an officer of the corporation. If the receiving bank acts solely on the basis of the letter, the corporation is not bound as the sender of the payment order unless the signature was that of the officer and the officer was authorized to act for the corporation in the issuance of payment orders, or some other agency doctrine such as apparent authority or estoppel causes the corporation to be bound. Estoppel can be illustrated by the following example. Suppose P is aware that A, who is unauthorized to act for P, has fraudulently misrepresented to T that A is authorized to act for P. T believes A and is about to rely on the misrepresentation. If P does not notify T of the true facts although P could easily do so, P may be estopped from denying A's lack of authority. A similar result could follow if the failure to notify T is the result of negligence rather than a deliberate decision. Restatement, Second, Agency § 8B. Other equitable principles such as subrogation or restitution might also allow a receiving bank to recover with respect to an unauthorized payment order that it accepted. In *Gatoil (U.S.A.), Inc. v. Forest Hill State Bank*, 1 U.C.C. Rep. Serv. 2d 171 (~~D.Md.~~ D. Md. 1986), a joint venturer not authorized to order payments from the account of the joint venture, ordered a funds transfer from the account. The transfer paid a bona fide debt of the joint venture. Although the transfer was unauthorized the court refused to require recredit of the account because the joint venture suffered no loss. The result can be rationalized on the basis of subrogation of the receiving bank to the right of the beneficiary of the funds transfer to receive the payment from the joint venture.

* * *

**Section 4A-204. Refund of Payment and Duty of Customer to Report with Respect to Unauthorized Payment Order**

* * *

**Official Comment**

* * *

**Section 4A-205. Erroneous Payment Orders**

* * *

**Official Comment**

* * *

**Section 4A-206. Transmission of Payment Order through Funds-Transfer or Other Communication System**

* * *

**Official Comment**

* * *

**Section 4A-207. Misdescription of Beneficiary**

* * *

**Official Comment**

* * *

2. Subsection (b), which takes precedence over subsection (a), deals with the problem of payment orders in which the description of the beneficiary does not allow identification of the beneficiary because the beneficiary is described by name and by an identifying number or an account number and the name and number refer to different persons. A very large percentage of payment orders issued to the beneficiary's bank by another bank are processed by automated means using machines capable of reading orders on standard formats that identify the beneficiary by an identifying number or the number of a bank account. The processing of the order by the beneficiary's bank and the crediting of the beneficiary's account are done by use of the identifying or bank account number without human reading of the payment order itself. The process is comparable to that used in automated payment of checks. The standard format, however, may also allow the inclusion of the name of the beneficiary and other information which can be useful to the beneficiary's bank and the beneficiary but which plays no part in the process of payment. If the beneficiary's bank has both the account number and name of the beneficiary supplied by the originator of the funds transfer, it is possible for the beneficiary's bank to determine whether the name and number refer to the same person, but if a duty to make that determination is imposed on the beneficiary's bank the benefits of automated payment are lost. Manual handling of payment orders is both expensive and subject to human error. If payment orders can be handled on an automated basis there are substantial economies of operation and the possibility of clerical error is reduced. Subsection (b) allows banks to utilize

automated processing by allowing banks to act on the basis of the number without regard to the name if the bank does not know that the name and number refer to different persons. "Knowledge" and "knows" are defined in Section 1-202(b) to mean actual knowledge, and Section 1-202(f) states rules for determining when an organization has knowledge of information received by the organization. The time of payment is the pertinent time at which knowledge or lack of knowledge must be determined.

* * *

In cases covered by subsection (b) the erroneous identification would in virtually all cases be the identifying or bank account number. In the typical case the error is made by the originator of the funds transfer. The originator should know the name of the person who is to receive payment and can further identify that person by an address that would normally be known to the originator. It is not unlikely, however, that the originator may not be sure whether the identifying or account number refers to the person the originator intends to pay. Subsection (b)(1) deals with the typical case in which the beneficiary's bank pays on the basis of the account number and is not aware at the time of payment that the named beneficiary is not the holder of the account which was paid. In some cases the false number will be the result of error by the originator. In other cases fraud is involved. For example, Doe is the holder of shares in Mutual Fund. Thief, impersonating Doe, requests redemption of the shares and directs Mutual Fund to wire the redemption proceeds to Doe's account #12345 in Beneficiary's Bank. Mutual Fund originates a funds transfer by issuing a payment order to Originator's Bank to make the payment to Doe's account #12345 in Beneficiary's Bank. Originator's Bank executes the order by issuing a conforming payment order to Beneficiary's Bank which makes payment to account #12345. That account is the account of Roe rather than Doe. Roe might be a person acting in concert with Thief or Roe might be an innocent third party. Assume that Roe is a gem merchant that agreed to sell gems to Thief who agreed to wire the purchase price to Roe's account in Beneficiary's Bank. Roe believed that the credit to Roe's account was a transfer of funds from Thief and released the gems to Thief in good faith in reliance on the payment. The case law is unclear on the responsibility of a beneficiary's bank in carrying out a payment order in which the identification of the beneficiary by name and number is conflicting. See *Securities Fund Servs.~~ices~~, Inc. v. American ~~National~~ Nat'l Bank*, 542 ~~F.Supp.~~ F. Supp. 323 ~~(N.D.Ill.~~N.D. Ill. 1982) and *Bradford Trust Co. v. Texas ~~American~~ Am. Bank*, 790 F.2d 407 (5th Cir. 1986). Section 4A-207 resolves the issue.

* * *

**Section 4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank**

* * *

**Official Comment**

* * *

**Section 4A-209. Acceptance of Payment Order**

* * *

**Official Comment**

* * *

**Section 4A-210. Rejection of Payment Order**

* * *

**Official Comment**

* * *

4. Subsection (d) treats acceptance and rejection as mutually exclusive. If a payment order has been accepted, rejection of that order becomes impossible. If a payment order has been rejected it cannot be accepted later by the receiving bank. Once notice of rejection has been given, the sender may have acted on the notice by making the payment through other channels. If the receiving bank wants to act on a payment order that it has rejected it has to obtain the consent of the sender. In that case the consent of the sender would amount to the giving of a second payment order that substitutes for the rejected first order. If the receiving bank suspends payments (Section ~~4-104(1)(k)~~4-104(a)(12)), subsection (c) provides that unaccepted payment orders are deemed rejected at the time suspension of payments occurs. This prevents acceptance by passage of time under Section 4A-209(b)(3).

* * *

**Section 4A-211. Cancellation and Amendment of Payment Order.**

* * *

**Official Comment**

* * *

6. Acceptance by the receiving bank of a payment order issued by the sender is comparable to acceptance of an offer under the law of contracts. Under that law the death or legal incapacity of an offeror terminates the offer even though the offeree has no notice of the death or incapacity. Restatement Second, Contracts § 48. Comment a. to that section states that the "rule seems to be a relic of the obsolete view that a contract requires a 'meeting of minds,' and it is out of harmony with the modern doctrine that a manifestation of assent is effective without regard to actual mental assent." Subsection (g), which reverses the Restatement rule in the case of a payment order, is similar to Section ~~4-405(1)~~4-405(a) which applies to checks. Subsection (g) does not address the effect of the bankruptcy of the sender of a payment order before the order is accepted, but the principle of subsection (g) has been recognized in Bank of Marin v. England, 385 U.S. 99 (1966). Although Bankruptcy Code Section 542(c) may not have been drafted with wire transfers in mind, its language can be read to allow the receiving bank to charge the sender's account for the amount of the payment order if the receiving bank executed it in ignorance of the bankruptcy.

* * *

**Section 4A-212. Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order**

* * *

**Official Comment**

* * *

**PART 3**

**EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK**

**Section 4A-301. Execution and Execution Date**

* * *

**Official Comment**

* * *

**Section 4A-302. Obligations of Receiving Bank in Execution of Payment Order**

* * *

**Official Comment**

* * *

**Section 4A-303. Erroneous Execution of Payment Order**

* * *

**Official Comment**

* * *

**Section 4A-304. Duty of Sender to Report Erroneously Executed Payment Order**

* * *

**Official Comment**

* * *

**Section 4A-305. Liability for Late or Improper Execution or Failure to Execute Payment Order**

* * *

**Official Comment**

* * *

2. Subsection (b) applies to cases of breach of Section 4A-302 involving more than mere delay. In those cases the bank is liable for damages for improper execution but they are limited to compensation for interest losses and incidental expenses of the sender resulting from the breach, the expenses of the sender in the funds transfer and attorney's fees. This subsection reflects the judgment that imposition of consequential damages on a bank for commission of an error is not justified.

* * *

As the court in *Evra* also noted, the originator of the funds transfer is in the best position to evaluate the risk that a funds transfer will not be made on time and to manage that risk by issuing a payment order in time to allow monitoring of the transaction. The originator, by asking the beneficiary, can quickly determine if the funds transfer has been completed. If the originator has sent the payment order at a time that allows a reasonable margin for correcting error, no loss is likely to result if the transaction is monitored. The other published cases on this issue reach the *Evra* result. *Central Coordinates, Inc. v. Morgan Guaranty Trust Co.*, 40 U.C.C. Rep. Serv. 1340 (~~N.Y.Sup.Ct.~~ N.Y. Sup. Ct. 1985), and *Gatoil (U.S.A.), Inc. v. Forest Hill State Bank*, 1 U.C.C. Rep. Serv. 2d 171 (~~D.Md.~~ D. Md. 1986).
* * *

**PART 4**

**PAYMENT**

**Section 4A-401. Payment Date**

* * *

**Official Comment**

* * *

**Section 4A-402. Obligation of Sender to Pay Receiving Bank**

* * *

**Official Comment**

* * *

**Section 4A-403. Payment by Sender to Receiving Bank**

* * *

**Official Comment**

* * *

**Section 4A-404. Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary**

* * *

**Official Comment**

* * *

**Section 4A-405. Payment by Beneficiary's Bank to Beneficiary**

* * *

**Official Comment**

* * *

**Section 4A-406. Payment by Originator to Beneficiary; Discharge of Underlying Obligation**

* * *

**Official Comment**

* * *

**PART 5**

**MISCELLANEOUS PROVISIONS**

**Section 4A-501. Variation by Agreement and Effect of Funds-Transfer System Rule**

* * *

**Official Comment**

* * *

**Section 4A-502. Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank**

* * *

**Official Comment**

* * *

**Section 4A-503. Injunction or Restraining Order with Respect to Funds Transfer**

* * *

**Official Comment**

* * *

**Section 4A-504. Order in Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals from Account**

* * *

**Official Comment**

* * *

**Section 4A-505. Preclusion of Objection to Debit of Customer's Account**

* * *

**Official Comment**

* * *

**Section 4A-506. Rate of Interest**

* * *

**Official Comment**

* * *

**Section 4A-507. Choice of Law**

* * *

**Official Comment**

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 5 – LETTERS OF CREDIT

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1995 and revised in: (i) 1999, in connection with the revision of Article 9; (ii) 2001, in connection with the revision of Article 1; (iii) 2002, to correct errata; (iv) 2003, in connection with the revision of Article 7; and (v) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

**UNIFORM COMMERCIAL CODE**
**REVISED ARTICLE 5. – LETTERS OF CREDIT**

## PREFATORY NOTE

### Reason for Revision

* * *

Measured in terms of these areas which are vital to any system of commercial law, the current combination of statute and case law is found wanting in major respects both as to predictability and certainty. What is at issue here are not matters of sophistry but important issues of substance which have not been resolved by the current case law/code method and which admit of little likelihood of such resolution." (45 Bus. Lawyer 1521, at 1532, 1535-6)[0]

The Drafting Committee began its deliberations with the Task Force Report in hand. The final work of the Drafting Committee varies from many of the suggestions of the Task Force.

* * *

### Process of Achieving Uniformity

The essence of uniform law revision is to obtain a sufficient consensus and balance among the interests of the various participants so that universal and uniform enactment by the various States may be achieved.

In part this is accomplished by extensive consultation on and broad circulation of the drafts from 1990, when the project began, until approval of the final draft by the American ~~law~~ Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL).

* * *

### Advisors

Professor Gerald T. McLaughlin, Loyola Law School, ABA, Section of Business Law
James G. Barnes, Baker & McKenzie LLP/U.S. Council on International Banking, Inc.
Harold S. Burman, U.S. Department of State
James E. Byrne, George Mason University, Institute of International Banking Law and Practice Inc.

[0] The Task Force members were: Professor James E. Byrne (George Mason University School of Law) Chair; Professor Boris Kozolchyk (University of Arizona College of Law); Michael Evan Avidon (Moses & Singer LLP); James G. Barnes (Baker & McKenzie LLP); Arthur G. Lloyd (Citibank N.A.); Janis S. Penton (Rosen, Wachtell & Gilbert); Richard F. Purcell (Connell, Rice & Sugar Co.); Alan L. Bloodgood (Morgan Guaranty Trust Co.); Charles del Busto (Manufacturers Hanover Trust Co.); Vincent Maulella (Manufacturers Hanover Trust Co.).

Professor John Dolan, original ABA Advisor
Henry N. Dyhouse, U.S. Central Credit Union
David P. Goch, Treasury Management Association
Thomas J. Greco, American Bankers Association
Henry Harfield, Shearman & Sterling LLP
Oliver I. Ireland, Board of Governors of Federal Reserve Board
James W. Kopp, Shell Oil Company/Treasury Management Association
Professor Boris Kozolchyk, University of Arizona/National Law Center for Inter-American Free Trade, U.S. Council on International Banking, Inc.
Vincent M. Maulella, Manufacturers Hanover Trust Co./U.S.Council on International Banking, Inc.
Robert M. Rosenblith, National Westminster Bank
Bradley K. Sabel, Federal Reserve Bank of New York
Joseph H. Sommer, Federal Reserve Bank of New York
Jamileh Soufan, American General Corporation/Treasury Management Association
Dan Taylor, U.S. Council on International Banking, Inc.
William H. Thornton, Security Pacific National Bank/California Bankers Association
Paul S. Turner, Occidental Petroleum Corporation/Treasury Management Association
Stanley M. Walker, Exxon Company U.S.A./Treasury Management Association

**Active Participants**

Michael E. Avidon, Moses & Singer LLP/N.Y. State Bar Association, Banking Law Committee, Subcommittee on Letters of Credit
Walter B. Baker, ABN AMRO Bank, N.V.
Thomas C. Baxter, Jr., Federal Reserve Bank of New York
Professor Amelia H. Boss, Pennsylvania Bar Association, Section of Corporation, Banking & Business Law, Commercial Law Committee
Maria A. Chanco, Bank of America, N.T. & S.A.
Frank P. Curran, Treasury Management Association
Carol R. Dennis, Office of Federal Procurement Policy, OFMB
Albert J. Givray, Oklahoma Bar Association, Section of Banking & Commercial Law
Sidney S. Goldstein, New York State Bar Association
Professor Egon Guttman, The American University
George A. Hisert, State Bar of California, Section of Business Law, Committee on UCC, Subcommittee on Letters of Credit
Larry J. Jones, Mobil Oil Credit Corporation
Carter H. Klein, Jenner & Block LLP
Arthur G. Lloyd, ABA, Section of Business Law, Committee on UCC, Subcommittee on Letters of Credit, Working Group on UCC Article 5 Revision
Rebecca S. McCulloch, ABN AMRO Bank, N.V.
Dennis L. Noah, First National Bank of Maryland/U.S. Council on International Banking, Inc.
James Purvis, The Bank of California
James E. Roselle, First National Bank of Chicago
R. David Whitaker, ABA, Section of Business Law, Committee on UCC, Subcommittee on ECP, Working Group on EDC
Brooke Wunnicke, ABA, Section of Business Law, Committee on UCC, Subcommittee on Letters of Credit

* * *

**Benefits of Revised Article 5 to Issuers**

**Consequential Damages.** Section 5-111 precludes consequential and punitive damages. It, however, provides strong incentives for Issuers to honor, including provisions for ~~attorneys~~ attorney's fees and expenses of litigation, interest, and specific performance. If consequential and punitive damages were allowed, the cost of letters of credit could rise substantially.

* * *

**Recognition of UCP.** Section ~~5-116(c)~~5-116(e) expressly recognizes that if the UCP is incorporated by reference into the letter of credit, the agreement varies the provisions of Article 5 with which it may conflict except for the non-variable provisions of Article 5.

* * *

**Benefits of Revised Article 5 to Beneficiaries**

* * *

**Damages.** The damages provided are expanded and clarified. They include ~~attorneys~~ attorney's fees and expenses of litigation and payment of the full amount of the wrongfully dishonored or repudiated demand, with interest, without an obligation of the beneficiary to mitigate damages (Section 5-111).

* * *

## UNIFORM COMMERCIAL CODE
## REVISED ARTICLE 5. LETTERS OF CREDIT

### Table of Disposition of Sections in Former Article 5

* * *

**UNIFORM COMMERCIAL CODE**
**REVISED ARTICLE 5. – LETTERS OF CREDIT**

**Section 5-101. Short Title**

* * *

**Official Comment**

* * *

**Section 5-102. Definitions**

* * *

**Official Comment**

1. Since no one can be a confirmer unless that person is a nominated person as defined in Section 5-102(a)(4) and ~~5-102(a)~~(11), those who agree to "confirm" without the designation or authorization of the issuer are not confirmers under Article 5. Nonetheless, the undertakings to the beneficiary of such persons may be enforceable by the beneficiary as letters of credit issued by the "confirmer" for its own account or as guarantees or contracts outside of Article 5.

* * *

3. "Good faith" continues in revised Article 5 to be defined as "honesty in fact." "Observance of reasonable standards of fair dealing" has not been added to the definition. The narrower definition of "honesty in fact" reinforces the "independence principle" in the treatment of "fraud," "strict compliance," "preclusion," and other tests affecting the performance of obligations that are unique to letters of credit. This narrower definition – which does not include "fair dealing" – is appropriate to the decision to honor or dishonor a presentation of documents specified in a letter of credit. The narrower definition is also appropriate for other parts of revised Article 5 where greater certainty of obligations is necessary and is consistent with the goals of speed and low cost. It is important that U.S. letters of credit have continuing vitality and competitiveness in international transactions.

* * *

The contract between the applicant and beneficiary is not governed by Article 5, but by applicable contract law, such as Article 2 or the general law of contracts. "Good faith" in that contract is defined by other law, such as Section ~~2-103(1)(b)~~1-201(b)(20) or Restatement of Contracts 2d, § 205, which incorporate the principle of "fair dealing" in most cases, or a State's common law or other statutory provisions that may apply to that contract.

* * *

6. The label on a document is not conclusive; certain documents labelled "guarantees" in accordance with European (and occasionally, American) practice are letters of credit. On the other hand, even documents that are labelled "letter of credit" may not constitute letters of credit

under the definition in Section 5-102(a). When a document labelled a letter of credit requires the issuer to pay not upon the presentation of documents, but upon the determination of an extrinsic fact such as applicant's failure to perform a construction contract, and where that condition appears on its face to be fundamental and would, if ignored, leave no obligation to the issuer under the document labelled letter of credit, the issuer's undertaking is not a letter of credit. It is probably some form of suretyship or other contractual arrangement and may be enforceable as such. See Sections 5-102(a)(10) and 5-103(d). Therefore, undertakings whose fundamental term requires an issuer to look beyond documents and beyond conventional reference to the clock, calendar, and practices concerning the form of various documents are not governed by Article 5. Although Comment 9 to Section 5-108(g) recognizes that certain nondocumentary conditions can be included in a letter of credit without denying the undertaking the status of letter of credit, that section does not apply to cases where the nondocumentary condition is fundamental to the issuer's obligation. The rules in Sections 5-102(a)(10), 5-103(d), and 5-108(g) approve the conclusion in *Wichita Eagle & Beacon Publishing Co. v. Pacific ~~Nat.~~Nat'l Bank*, 493 F.2d 1285 (9th Cir. 1974).

* * *

**Section 5-103. Scope**

* * *

**Official Comment**

* * *

2. Like all of the provisions of the Uniform Commercial Code, Article 5 is supplemented by Section 1-103 and, through it, by many rules of statutory and common law. Because this article is quite short and has no rules on many issues that will affect liability with respect to a letter of credit transaction, law beyond Article 5 will often determine rights and liabilities in letter of credit transactions. Even within letter of credit law, the article is far from comprehensive; it deals only with "certain" rights of the parties. Particularly with respect to the standards of performance that are set out in Section 5-108, it is appropriate for the parties and the courts to turn to customs and practice such as the Uniform Customs and Practice for Documentary Credits, currently published by the International Chamber of Commerce as I.C.C. Pub. No. 500 (hereafter UCP). Many letters of credit specifically adopt the UCP as applicable to the particular transaction. Where the UCP are adopted but conflict with Article 5 and except where variation is prohibited, the UCP terms are permissible contractual modifications under Sections 1-302 and 5-103(c). See Section ~~5-116(c)~~5-116(e). Normally Article 5 should not be considered to conflict with practice except when a rule explicitly stated in the UCP or other practice is different from a rule explicitly stated in Article 5.

* * *

Neither the obligation of an issuer under Section 5-108 nor that of an adviser under Section 5-107 is an obligation of the kind that is invariable under Section ~~1-102(3)~~1-302(b). Section 5-103(c) and Comment 1 to Section 5-108 make it clear that the applicant and the issuer may agree to almost any provision establishing the obligations of the issuer to the applicant. The last sentence of subsection (c) limits the power of the issuer to achieve that result by a

nonnegotiated disclaimer or limitation of remedy.

* * *

4. Section 5-102(2) and (3) of original Article 5 are omitted as unneeded; the omission does not change the law.

**Section 5-104. Formal Requirements**

* * *

**Official Comment**

* * *

**Section 5-105. Consideration**

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

**Official Comment**

It is not to be expected that any issuer will issue its letter of credit without some form of remuneration. But it is not expected that the beneficiary will know what the issuer's remuneration was or whether in fact there was any identifiable remuneration in a given case. And it might be difficult for the beneficiary to prove the issuer's remuneration. This section dispenses with this proof and is consistent with the position of Lord Mansfield in *Pillans v. Van Mierop*, 97 ~~Eng.Rep.~~ Eng. Rep. 1035 (K.B. 1765) in making consideration irrelevant.

**Section 5-106. Issuance, Amendment, Cancellation, and Duration**

* * *

**Official Comment**

1. This section adopts the position taken by several courts, namely that letters of credit that are silent as to revocability are irrevocable. See, e.g., *Weyerhaeuser Co. v. First ~~Nat.~~Nat'l Bank*, 27 UCC Rep. Serv. 777 (S.D. Iowa 1979); *W.~~est~~ Va. Hous. Dev. Fund v. Sroka*, 415 F. Supp. 1107 (W.D. Pa. 1976). This is the position of the current UCP (500). Given the usual commercial understanding and purpose of letters of credit, revocable letters of credit offer unhappy possibilities for misleading the parties who deal with them.

* * *

**Section 5-107. Confirmer, Nominated Person, and Adviser**

* * *

**Official Comment**

* * *

**Section 5-108. Issuer's Rights and Obligations**

* * *

**Official Comment**

* * *

The section adopts strict compliance, rather than the standard that commentators have called "substantial compliance," the standard arguably applied in *Banco Español de Credito v. State Street Bank ~~and~~ & Trust ~~Company~~Co.*, 385 F.2d 230 (1st Cir. 1967) and *Flagship Cruises Ltd. v. New England Merchants ~~Nat.~~Nat'l Bank*, 569 F.2d 699 (1st Cir. 1978). Strict compliance does not mean slavish conformity to the terms of the letter of credit. For example, standard practice (what issuers do) may recognize certain presentations as complying that an unschooled layman would regard as discrepant. By adopting standard practice as a way of measuring strict compliance, this article indorses the conclusion of the court in *New Braunfels Nat. Bank v. Odiorne*, 780 S.W.2d 313 (~~Tex.Ct.App.~~Tex. Ct. App. 1989) (beneficiary could collect when draft requested payment on "~~"~~Letter of Credit No. 86-122-5~~"~~" and letter of credit specified "~~"~~Letter of Credit No. 86-122-S~~"~~" holding strict compliance does not demand oppressive perfectionism). The section also indorses the result in *Tosco Corp. v. ~~Federal Deposit Insurance Corp.~~FDIC*, 723 F.2d 1242 (6th Cir. 1983). The letter of credit in that case called for "drafts Drawn under Bank of Clarksville Letter of Credit Number 105." The draft presented stated "drawn under Bank of Clarksville, Clarksville, Tennessee letter of Credit No. 105." The court correctly found that despite the change of upper case "L" to a lower case "l" and the use of the word "No." instead of "Number," and despite the addition of the words "Clarksville, Tennessee," the presentation conformed. Similarly a document addressed by a foreign person to General Motors as "Jeneral Motors" would strictly conform in the absence of other defects.

Identifying and determining compliance with standard practice are matters of interpretation for the court, not for the jury. As with similar rules in Sections 4A-202(c) and 2-302, it is hoped that there will be more consistency in the outcomes and speedier resolution of disputes if the responsibility for determining the nature and scope of standard practice is granted to the court, not to a jury. Granting the court authority to make these decisions will also encourage the salutary practice of courts' granting summary judgment in circumstances where there are no significant factual disputes. The statute encourages outcomes such as that in *American Coleman Co. v. Intrawest Bank*, 887 F.2d 1382 (10th Cir. 1989), where summary judgment was granted.

* * *

3. The requirement that the issuer send notice of the discrepancies or be precluded from asserting discrepancies is new to Article 5. It is taken from the similar provision in the UCP and is intended to promote certainty and finality.

The section thus substitutes a strict preclusion principle for the doctrines of waiver and

estoppel that might otherwise apply under Section 1-103. It rejects the reasoning in *Flagship Cruises Ltd. v. New England Merchants~~' Nat.~~ Nat'l Bank*, 569 F.2d 699 (1st Cir. 1978), and *Wing On Bank Ltd. v. American ~~Nat.~~Nat'l Bank & Trust Co.*, 457 F.2d 328 (5th Cir. 1972), where the issuer was held to be estopped only if the beneficiary relied on the issuer's failure to give notice.

* * *

7. The issuer's obligation to honor runs not only to the beneficiary but also to the applicant. It is possible that an applicant who has made a favorable contract with the beneficiary will be injured by the issuer's wrongful dishonor. Except to the extent that the contract between the issuer and the applicant limits that liability, the issuer will have liability to the applicant for wrongful dishonor under Section 5-111 as a matter of contract law. A good faith extension of the time in Section 5-108(b) by agreement between the issuer and beneficiary binds the applicant even if the applicant is not consulted or does not consent to the extension.

The issuer's obligation to dishonor when there is no apparent compliance with the letter of credit runs only to the applicant. No other party to the transaction can complain if the applicant waives compliance with terms or conditions of the letter of credit or agrees to a less stringent standard for compliance than that supplied by this article. Except as otherwise agreed with the applicant, an issuer may dishonor a noncomplying presentation despite an applicant's waiver.

Waiver of discrepancies by an issuer or an applicant in one or more presentations does not waive similar discrepancies in a future presentation. Neither the issuer nor the beneficiary can reasonably rely upon honor over past waivers as a basis for concluding that a future defective presentation will justify honor. The reasoning of *Courtaulds of ~~North America~~N. Am. Inc. v. North Carolina ~~Nat.~~Nat'l Bank*, 528 F.2d 802 (4th Cir. 1975), is accepted and that expressed in *Schweibish v. Pontchartrain State Bank*, 389 ~~So.2d~~ So. 2d 731 (~~La.App.~~La. Ct. App. 1980), and *Titanium Metals Corp. v. Space Metals, Inc.*, 529 P.2d 431 (Utah 1974), is rejected.

8. The standard practice referred to in subsection (e) includes (i) international practice set forth in or referenced by the Uniform Customs and Practice, (ii) other practice rules published by associations of financial institutions, and (iii) local and regional practice. It is possible that standard practice will vary from one place to another. Where there are conflicting practices, the parties should indicate which practice governs their rights. A practice may be overridden by agreement or course of dealing. See Section ~~1-205(4)~~1-303(e).

9. The responsibility of the issuer under a letter of credit is to examine documents and to make a prompt decision to honor or dishonor based upon that examination. Nondocumentary conditions have no place in this regime and are better accommodated under contract or suretyship law and practice. In requiring that nondocumentary conditions in letters of credit be ignored as surplusage, Article 5 remains aligned with the UCP (see UCP 500 Article 13c), approves cases like *Pringle-Associated Mortgage Corp. v. Southern ~~National~~ Nat'l Bank*, 571 F.2d 871, 874 (5th Cir. 1978), and rejects the reasoning in cases such as *Sherwood & Roberts, Inc. v. First Security Bank*, 682 P.2d 149 (Mont. 1984).

* * *

**Section 5-109. Fraud and Forgery**

* * *

**Official Comment**

1. This recodification makes clear that fraud must be found either in the documents or must have been committed by the beneficiary on the issuer or applicant. See *Cromwell v. Commerce & Energy Bank*, 464 ~~So.2d~~So. 2d 721 (La. 1985).

* * *

Material fraud by the beneficiary occurs only when the beneficiary has no colorable right to expect honor and where there is no basis in fact to support such a right to honor. The section indorses articulations such as those stated in *Intraworld Indus. v. Girard Trust Bank*, 336 A.2d 316 (Pa. 1975), *Roman Ceramics Corp. v. People's ~~Nat.~~Nat'l Bank*, 714 F.2d 1207 (3d Cir. 1983), and similar decisions and embraces certain decisions under Section 5-114 that relied upon the phrase "fraud in the transaction." Some of these decisions have been summarized as follows in *Ground Air Transfer v. Westate's Airlines*, 899 F.2d 1269, 1272-73 (1st Cir. 1990):

* * *

4. The standard for injunctive relief is high, and the burden remains on the applicant to show, by evidence and not by mere allegation, that such relief is warranted. Some courts have enjoined payments on letters of credit on insufficient showing by the applicant. For example, in *Griffin Cos. v. First ~~Nat.~~Nat'l Bank*, 374 N.W.2d 768 (~~Minn.App.~~Minn. Ct. App. 1985), the court enjoined payment under a standby letter of credit, basing its decision on plaintiff's allegation, rather than competent evidence, of fraud.

* * *

**Section 5-110. Warranties**

* * *

**Official Comment**

* * *

**Section 5-111. Remedies**

* * *

**Official Comment**

1. The right to specific performance is new. The express limitation on the duty of the beneficiary to mitigate damages adopts the position of certain courts and commentators. Because the letter of credit depends upon speed and certainty of payment, it is important that the issuer not be given an incentive to dishonor. The issuer might have an incentive to dishonor if it

could rely on the burden of mitigation falling on the beneficiary~~,~~ (e.g., to sell goods and sue only for the difference between the price of the goods sold and the amount due under the letter of credit). Under the scheme contemplated by Section 5-111(a), the beneficiary would present the documents to the issuer. If the issuer wrongfully dishonored, the beneficiary would have no further duty to the issuer with respect to the goods covered by documents that the issuer dishonored and returned. The issuer thus takes the risk that the beneficiary will let the goods rot or be destroyed. Of course the beneficiary may have a duty of mitigation to the applicant arising from the underlying agreement, but the issuer would not have the right to assert that duty by way of defense or setoff. See Section 5-117(d). If the beneficiary sells the goods covered by dishonored documents or if the beneficiary sells a draft after acceptance but before dishonor by the issuer, the net amount so gained should be subtracted from the amount of the beneficiary's damages – at least where the damage claim against the issuer equals or exceeds the damage suffered by the beneficiary. If, on the other hand, the beneficiary suffers damages in an underlying transaction in an amount that exceeds the amount of the wrongfully dishonored demand (e.g., where the letter of credit does not cover 100 percent of the underlying obligation), the damages avoided should not necessarily be deducted from the beneficiary's claim against the issuer. In such a case, the damages would be the lesser of (i) the amount recoverable in the absence of mitigation (that is, the amount that is subject to the dishonor or repudiation plus any incidental damages) and (ii) the damages remaining after deduction for the amount of damages actually avoided.

A beneficiary need not present documents as a condition of suit for anticipatory repudiation, but if a beneficiary could never have obtained documents necessary for a presentation conforming to the letter of credit, the beneficiary cannot recover for anticipatory repudiation of the letter of credit. *Doelger v. Battery Park Bank*, ~~201 A.D. 515,~~ 194 N.Y.S. 582 (App. Div. 1922); ~~and~~ *Decor by Nikkei Int'l, Inc. v. Federal Republic of Nigeria*, 497 ~~F.Supp.~~F. Supp. 893 (S.D.N.Y. 1980), *aff'd*, 647 F.2d 300 (2d Cir. 1981), *cert. denied*, 454 U.S. 1148 (1982). The last sentence of subsection (c) does not expand the liability of a confirmer to persons to whom the confirmer would not otherwise be liable under Section 5-107.

* * *

**Section 5-112. Transfer of Letter of Credit**

* * *

**Official Comment**

* * *

**Section 5-113. Transfer by Operation of Law**

* * *

**Official Comment**

This section affirms the result in *Pastor v. ~~Nat.~~Nat'l Republic Bank of Chicago*, ~~76 Ill.2d 139,~~ 390 N.E.2d 894 (Ill. 1979), and ~~*Federal Deposit Insurance Co.*~~*FDIC v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990). Both electronic and tangible documents may be signed.

* * *

**Section 5-114. Assignment of Proceeds**

* * *

**Official Comment**

* * *

**Section 5-115. Statute of Limitations**

* * *

**Official Comment**

* * *

**Section 5-116. Choice of Law and Forum**

* * *

**Official Comment**

* * *

**Section 5-117. Subrogation of Issuer, Applicant, and Nominated Person.**

* * *

**Official Comment**

1. By itself this section does not grant any right of subrogation. It grants only the right that would exist if the person seeking subrogation "were a secondary obligor." (The term "secondary obligor" refers to a surety, guarantor, or other person against whom or whose property an obligee has recourse with respect to the obligation of a third party. See Restatement of the Law Third, Suretyship § 1 (1995).) If the secondary obligor would not have a right to subrogation in the circumstances in which one is claimed under this section, none is granted by this section. In effect, the section does no more than to remove an impediment that some courts have found to subrogation because they conclude that the issuer's or other claimant's rights are "independent" of the underlying obligation. If, for example, a secondary obligor would not have a subrogation right because its payment did not fully satisfy the underlying obligation, none would be available under this section. The section indorses the position of Judge Becker in *Tudor ~~Development~~ Dev. Group, Inc. v. United States Fidelity ~~and~~ & Guaranty*, 968 F.2d 357 (~~3rd~~ 3d Cir. 1991).

* * *

**Section 5-118. Security Interest of Issuer or Nominated Person**

* * *

**Official Comment**

1. This section gives the issuer of a letter of credit or a nominated person thereunder an automatic ~~perfected~~ security interest in a "document" (as that term is defined in Section 5-102(a)(6)). The security interest arises only if the document is presented to the issuer or nominated person under the letter of credit and only to the extent of the value that is given. This security interest is analogous to that awarded to a collecting bank under Section 4-210. Subsection (b) contains special rules governing the security interest arising under this section. In all other respects, a security interest arising under this section is subject to Article 9. See Section 9-109. Thus, for example, a security interest arising under this section may give rise to a security interest in proceeds under Section 9-315.

2. Subsection (b)(1) makes a security agreement unnecessary to the creation of a security interest under this section. Under subsection (b)(2), a security interest arising under this section is perfected if the document is presented in a medium other than a written or tangible medium. Documents that are written and that are not an otherwise-defined type of collateral under Article 9 (e.g., an invoice or inspection certificate) may be goods, in which an issuer or nominated person could perfect its security interest by possession. Because the definition of document in Section 5-102(a)(6) includes records (e.g., electronic records) that may not be goods, subsection (b)(2) provides for automatic perfection (i.e., without filing or possession).

Under subsection (b)(3), if the document (i) is in a written or tangible medium, (ii) is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, and (iii) is not in the debtor's possession, the security interest is perfected and has priority over a conflicting security interest. If the document is a type of tangible collateral that subsection (b)(3) excludes from its perfection and priority rules, ~~the issuer or nominated person must comply with the normal method of perfection (e.g., possession of an instrument) and is~~ a security interest in the document arising under subsection (a) would be automatically perfected pursuant to Section 9-309(8) but subject to the applicable Article 9 priority rules. Documents to which subsection (b)(3) applies may be important to an issuer or nominated person. For example, a confirmer who pays the beneficiary must be assured that its rights to all documents are not impaired. It will find it necessary to present all of the required documents to the issuer in order to be reimbursed. Moreover, when a nominated person sends documents to an issuer in connection with the nominated person's reimbursement, that activity is not a collection, enforcement, or disposition of collateral under Article 9.

* * *

TRANSITION PROVISIONS

**Section [ ]. Effective Date**

* * *

**Section [ ]. Repeal**

* * *

**Section [ ]. Applicability**

* * *

**Section [ ]. Savings Clause**

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 6 – BULK SALES

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**

**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1989 and revised in: (i) 1999, in connection with the revision of Article 9; and (ii) 2002, in connection with corrections to Article 9.

**UNIFORM COMMERCIAL CODE**
**REPEALER OF ARTICLE 6 – BULK TRANSFERS**
**and**
**[REVISED] ARTICLE 6 – BULK SALES**
**(States to Select One Alternative)**

## PREFATORY NOTE

* * *

**UNIFORM COMMERCIAL CODE**
**REPEALER OF ARTICLE 6 – BULK TRANSFERS**

**and**

**[REVISED] ARTICLE 6 – BULK SALES**

**(States To Select One Alternative)**

**Alternative A**

**[Section 1. Repeal**

* * *

**Section 2. Amendment**

* * *

**Section 3. Amendment**

* * *

**Section 4. Savings Clause**

* * *

**End of Alternative A**

* * *

**Alternative B**

**[Section 6-101. Short Title**

* * *

**Official Comment**

* * *

**Section 6-102. Definitions and Index of Definitions**

* * *

**(States To Select One Alternative)**

**Alternative A**

* * *

**Alternative B**

* * *

**Official Comment**

* * *

(o) "Value". New. The definition in Section ~~1-201(44)~~1-204 is not appropriate in the context of this Article.

* * *

**Section 6-103. Applicability of Article**

* * *

**Official Comment**

* * *

2. The choice-of-law rule in subsections (1)(b) and (2) derives from former Section 9-103(3) (now codified as Sections 9-301 and 9-307). Any agreement between the buyer and the seller with regard to the law governing a bulk sale does not affect the choice-of-law rule in this Article.

* * *

Subsection (3)(j) derives from subsection (6) of Section 6-103 (1987 Official Text) and is available to buyers who are not insolvent (as defined in Section ~~1-201(23)~~1-201(b)(23)), assume all the seller's business debts in full, and give notice of the assumption. Subsection (3)(k) derives from subsection (7) of Section 6-103 (1987 Official Text) and excludes transactions in which the risks to creditors are minimal. Like subsection (3)(j), this subsection applies only if the buyer assumes all the seller's business debts in full and gives notice of the assumption. In addition, the buyer must be a new organization that is organized to take over and continue the seller's business, the seller must receive nothing from the sale other than an interest in the new organization, and the seller's interest must be subordinate to the claims arising from the assumption. Sales that may qualify for the exclusion include the incorporation of a partnership or sole proprietorship.

* * *

**Cross-References**:

Point 1: Sections 9-102(a)(23), (33), (34), (44), (48).
Point 2: Sections ~~1-105~~1-301, 9-301, and 9-307.
Point 3: Section 6-102.

Point 4: Sections 9-609, 9-610, and 9-620.
Point 6: Sections 1-201 and ~~1-203~~1-304.
Point 7: Section 6-102.

**Definitional Cross-References:**

"Asset". Section 6-102.
"Auctioneer". Section 6-102.
"Bulk sale". Section 6-102.
"Buyer". Section 2-103.
"Claimant". Section 6-102.
"Collateral". Section 9-102(a)(12).
"Date of the bulk sale". Section 6-102.
"Date of the bulk-sale agreement". Section 6-102.
"Debt". Section 6-102.
"Insolvent". Section 1-201.
"Inventory". Section 9-102(a)(48).
"Knowledge". Section ~~1-201~~1-202.
"Liquidator". Section 6-102.
"Net contract price". Section 6-102.
"Notice". Section ~~1-201~~1-202.
"Organization". Section 1-201.
"Presumed". Section ~~1-201~~1-206.
"Proceeds". Section 9-102(a)(64).
"Sale". Section 2-106.
"Secured party". Section 9-102(a)(72).
"Security interest". Section 1-201.
"Seller". Section 2-103.
"Send". Section 1-201.
"United States". Section 6-102.
"Value". Section 6-102.
"Verified". Section 6-102.

**Section 6-104. Obligations of Buyer**

* * *

**Official Comment**

* * *

**Definitional Cross-References:**

"Buyer". Section 2-103.
"Bulk sale". Section 6-102.
"Claimant". Section 6-102.
"Date of the bulk sale". Section 6-102.
"Net contract price". Section 6-102.
"Notice". Section ~~1-201~~1-202.

"Seller". Section 2-103.
"Verified". Section 6-102.

**Section 6-105. Notice to Claimants**

* * *

**Official Comment**

* * *

**Cross-References**:

Point 1: Sections 1-201 and 6-104.
Point 2: Sections ~~1-203~~1-304 and 6-104.
Point 3: Sections 6-102, 6-104, 9-108, 9-502 and 9-504.
Point 4: Sections 6-104 and 9-503.
Point 5: Section 6-102.
Point 6: Sections 6-107 and 9-506.

**Definitional Cross-References:**

"Asset". Section 6-102.
"Bulk sale". Section 6-102.
"Buyer". Section 2-103.
"Claim". Section 6-102.
"Claimant". Section 6-102.
"Date of the bulk sale". Section 6-102.
"Date of the bulk-sale agreement". Section 6-102.
"Debt". Section 6-102.
"Knowledge". Section ~~1-201~~1-202.
"Net contract price". Section 6-102.
"Seller". Section 2-103.
"Send". Section 1-201.
"Verified". Section 6-102.
"Written". Section 1-201.

**Section 6-106. Schedule of Distribution**

* * *

**Official Comment**

* * *

**Cross-References**:

Point 1: Sections 6-104 and 6-105.
Point 2: Section 6-105.

Point 3: Sections ~~1-102~~1-302 and 6-107.

* * *

**Section 6-107. Liability for Noncompliance**

* * *

**Official Comment**

* * *

**Cross-References**:

Point 1: Section 6-104.
Point 4: Section 4-103.
Point 5: Sections 6-104 and 6-105.
Point 6: Sections 1-201, 6-102, 6-103, and 6-104.
Point 7: Sections ~~1-102, 1-201~~1-304, 6-102 and 6-103.
Point 8: Section 6-102.
Point 9: Section ~~1-203~~1-304.
Point 10: Section ~~1-102~~1-302.
Point 11: Sections 6-102 and 6-110.
Point 12: Section 6-106.

* * *

**Section 6-108. Bulk Sales by Auction; Bulk Sales Conducted by Liquidator**

* * *

**Official Comment**

* * *

**Section 6-109. What Constitutes Filing; Duties of Filing Officer; Information from Filing Officer**

* * *

**Official Comment**

* * *

**Cross-References:**

Sections 6-103, 6-105, ~~9-403, and 9-407~~9-515, 9-516, 9-519, 9-522, 9-523, and 9-525.

* * *

**Section 6-110. Limitation of Actions**

* * *

**Official Comment**

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 7 – DOCUMENTS OF TITLE

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**

**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 2003 and revised in: (i) 2004 to correct errata; and (ii) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code.

~~Appendix I~~
~~[OMITTED]~~

## *PREFATORY NOTE*

* * *

To provide for electronic documents of title, several definitions in Article 1 were revised including "bearer," "bill of lading," "delivery," "document of title," "holder," and "warehouse receipt." The concept of an electronic document of title allows for commercial practice to determine whether records issued by bailees are "in the regular course of business or financing" and are "treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers." ~~Rev.~~ Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC. ~~Conforming amendments to other Articles of the UCC are contained in Appendix I.~~

* * *

# UNIFORM COMMERCIAL CODE

# ARTICLE 7 – DOCUMENTS OF TITLE

## PART 1

## GENERAL

### Section 7-101. Short Title

* * *

**Official Comment**

* * *

### Section 7-102. Definitions And Index Of Definitions

* * *

**Official Comment**

* * *

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of "document of title" in Section 1-201(b)(16).

* * *

### Section 7-103. Relation of Article to Treaty or Statute

* * *

**Official Comment**

* * *

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article and the conforming amendments to other articles of the Uniform Commercial Code promulgated as part of the revision of this article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to ~~Revised Article 1,~~ Section 1-108.

* * *

**Cross References:**

Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401~~,~~ and 7-403.

* * *

**Section 7-104. Negotiable and Nonnegotiable Document of Title**

* * *

**Official Comment**

* * *

**Cross Reference~~s~~:**

Sections 7-501 and 7-502.

* * *

**Section 7-105. Reissuance in Alternative Medium**

* * *

**Official Comment**

* * *

**Other relevant law:** ~~UNCITRAL Draft Instrument on the Carriage of Goods by SeaTransport Law~~ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008).

* * *

**Cross Reference~~s~~:**

* * *

**Definitional Cross Reference:**

"Person entitled to enforce~~,~~". Section 7-102.

**Section 7-106. Control of Electronic Document of Title**

* * *

**Official Comment**

**Prior Uniform Statutory Provision:** Uniform Electronic Transactions Act Section 16.

* * *

This section defines "control" for electronic documents of title. Subsections (a) and (b) derive from the Uniform Electronic Transactions Act Section 16 on ~~transferrable~~ transferable records. Unlike under UETA Section 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA Section 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

* * *

**Cross Reference~~s~~:**

* * *

**Definitional Cross-References:**

"Delivery"~~,~~. 1-201.
"Document of title"~~,~~. 1-201.

## PART 2

## WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

### Section 7-201. Person That May Issue a Warehouse Receipt; Storage under Bond

* * *

**Official Comment**

* * *

**Cross References:**

Sections 7-103~~,~~ and 7-401.

* * *

### Section 7-202. Form of Warehouse Receipt; Effect of Omission

* * *

**Official Comment**

* * *

### Section 7-203. Liability for Nonreceipt or Misdescription

* * *

**Official Comment**

* * *

**Section 7-204. Duty of Care; Contractual Limitation of Warehouse's Liability**

* * *

**Official Comment**

* * *

**Purposes of Changes:**

* * *

4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. See *Adams v. Ryan & Christie Storage, Inc.*, 563 F. Supp. 409 (E.D. Pa. 1983), *aff'd*, 725 F.2d 666 (3rd Cir. 1983). Cases such as *I.C.C. Metals Inc. v. Municipal Warehouse Co.*, 409 ~~N.E. 2d~~N.E.2d 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption of conversion to the warehouse's own use are disapproved. "Conversion to its own use" is narrower than the idea of conversion generally. Cases such as *Lipman v. Peterson*, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

* * *

**Definitional Cross References:**

"Goods". Section 7-102.
"Reasonable time". Section ~~1-204~~1-205.
"Sign". Section 7-102.
"Term". Section 1-201.
"Value". Section 1-204.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

**Section 7-205. Title under Warehouse Receipt Defeated in Certain Cases**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in 7-501. The definition of "buyer in ordinary course" is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. ~~See amended Section 2-103.~~ This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

* * *

**Definitional Cross References:**

"Buyer in ordinary course of business". Section 1-201.
"Delivery". Section 1-201.
"Duly negotiate". Section 7-501.
"Fungible~~"~~ goods". Section 1-201.
"Goods". Section 7-102.
"Value". Section 1-204.
"Warehouse receipt". Section 1-201.
"Warehouse". Section 7-102.

**Section 7-206. Termination of Storage at Warehouse's Option**

* * *

**Official Comment**

* * *

**Purposes:**

1. This section provides for three situations in which the warehouse may terminate storage for reasons other ~~then~~ than enforcement of its lien as permitted by Section 7-210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse's power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

* * *

**Section 7-207. Goods Must Be Kept Separate; Fungible Goods**

* * *

**Official Comment**

* * *

**Section 7-208. Altered Warehouse Receipts**

* * *

**Official Comment**

* * *

**Section 7-209. Lien of Warehouse**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

**Cross References:**

Point 1: Sections 7-501 and 7-502.
Point 2: Sections 9-109 and 9-333.
Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312~~,~~ and 9-322 .
Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333~~,~~ and 9-401.
Point 5: Sections 2-503 and 7-403.
Point 6: Sections 7-202 and 7-204.

* * *

**Section 7-210. Enforcement of Warehouse's Lien**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. A warehouses may have recourse to an interpleader action in appropriate circumstances. See Section 7-603.

* * *

**Cross References:**

Sections 2-706, 7-403, 7-603 and Part 6 of Article 9.

* * *

## PART 3

## BILLS OF LADING: SPECIAL PROVISIONS

### Section 7-301. Liability for Nonreceipt or Misdescription; "Said to Contain"; "Shipper's Weight, Load, and Count"; Improper Handling

* * *

**Official Comment**

* * *

**Purposes:**

* * *

2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. *D. H. Overmyer Co. v. Nelson Brantley Glass Go.,* 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre-Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser. There is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 F.Supp.F. Supp. 595 (D.N.J.1951D.N.J. 1951), are disapproved.

* * *

### Section 7-302. Through Bills of Lading and Similar Documents of Title

* * *

**Official Comment**

* * *

**Cross ~~reference~~Reference:**

Section 7-103.

* * *

**Section 7-303. Diversion; Reconsignment; Change of Instructions**

* * *

**Official Comment**

* * *

**Section 7-304. Tangible Bills of Lading in a Set**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

**Cross References:**

* * *

**Section 7-305. Destination Bills**

* * *

**Official Comment**

* * *

**Section 7-306. Altered Bills Of Lading**

* * *

**Official Comment**

* * *

**Cross References:**

* * *

**Section 7-307. Lien of Carrier**

* * *

**Official Comment**

* * *

**Purposes:**

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of Section 7-209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision in *In re Sharon Steel Corp.*, ~~25 U.C.C. Rep.2d 503,~~ 176 B.R. 384 (Bankr. W.D. Pa. 1995), is correct and is the controlling precedent.

* * *

**Section 7-308. Enforcement of Carrier's Lien**

* * *

**Official Comment**

* * *

**Section 7-309. Duty of Care; Contractual Limitation of Carrier's Liability**

* * *

**Official Comment**

* * *

**Purposes:**

* * *

3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. *Art Masters Associates, Ltd. v. United Parcel Serv.~~ice~~*, ~~77 N.Y.2d 200,~~ 567 N.E.2d 226 (N.Y. 1990); see~~See,~~ *Kemper Ins. Cos. v. Fed. Ex. Corp.*, 252 F.3d 509 (1st Cir), *cert. denied*, 534 U.S. 1020 (2001) (opinion interpreting federal law).

* * *

**Cross References:**

Sections 1-302, 7-103, 7-204~~,~~ and 7-403.

* * *

## PART 4

## WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

### Section 7-401. Irregularities in Issue of Receipt or Bill or Conduct Of Issuer

* * *

**Official Comment**

* * *

**Purposes:**

The bailee's liability on its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (Section 7-403) or its obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document" was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. *Tate v. Action Moving & Storage, Inc.,* 383 S.E.2d 229 (N.C. Ct. App. 1989), *rev. denied*, 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See Section 7-103.

**Cross References:**

Sections 7-103, 7-203, 7-204, 7-301~~,~~ and 7-309.

* * *

**Section 7-402. Duplicate Document of Title; Overissue**

* * *

**Official Comment**

* * *

**Cross References:**

Point 1: Sections 7-105, 7-207, 7-304~~,~~ and 7-601.
Point 3: Section 7-503.

* * *

**Section 7-403. Obligation of Bailee to Deliver; Excuse**

* * *

**Official Comment**

* * *

* * *

**Cross References:**

Point 2: Sections 7-502 and 7-503.
Point 3: Sections 2-705, 2A-526, 7-103, 7-204, ~~and~~ 7-309 and 10-103.
Point 4: Sections 7-209, 7-307 and 7-603.
Point 5: Section 7-503(1).
Point 6: Sections 7-601, 7-602~~,~~ and 7-603.

* * *

**Section 7-404. No Liability for Good-Faith Delivery Pursuant to Document of Title**

* * *

**Official Comment**

* * *

## PART 5

## WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

### Section 7-501. Form of Negotiation and Requirements of Due Negotiation

* * *

**Official Comment**

* * *

### Section 7-502. Rights Acquired by Due Negotiation

* * *

**Official Comment**

* * *

**Cross References:**

Sections 7-103, 7-205, 7-403, 7-501~~,~~ and 7-503.

* * *

### Section 7-503. Document of Title to Goods Defeated in Certain Cases

* * *

**Official Comment**

* * *

**Purposes:**

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief's own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord's or the mortgagee's rights as against one who takes

by due negotiation of a negotiable document. *In re Sharon Steel*, 176 B.R. 384 (Bankr. W.D. Pa. 1995); *In re R.V. Segars Co.*, 54 B.R. 170 (Bankr. S.C. 1985); *In re Jamestown Elevators, Inc.*, 49 B.R. 661 (Bankr. N.D. 1985).

* * *

This comment ~~1~~ should be considered in interpreting delivery, entrustment or acquiescence in application of Section 7-209(c).

* * *

**Cross References:**

Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320, 9-321(c)~~,~~ and 9-331.
Point 2: Sections 7-402 and 7-504.
Point 3: Sections 7-402, 7-403 and 7-404.

* * *

**Section 7-504. Rights Acquired in Absence of Due Negotiation; Effect of Diversion; Stoppage of Delivery**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

"Bailee". Section 7-102.
"Bill of lading". Section 1-201.
"Buyer in ordinary course of business". Section 1-201.
"Consignee". Section 7-102.
"Consignor". Section 7-102.
"Creditor". Section 1-201.
"Delivery". Section 1-201.
"Document of Title". Section 1-201.
"Duly negotiate". Section 7-501.
"Good faith". Section 1-201. [7-102].
"Goods". Section 7-102.
~~"Honor". Section 1-201.~~
"Lessee in ordinary course". Section 2A-103.
"Notification" Section 1-202.
"Purchaser". Section 1-201.
"Rights". Section 1-201.

**Section 7-505. Indorser Not Guarantor for Other Parties**

* * *

**Official Comment**

* * *

**Cross References:**

* * *

**Section 7-506. Delivery without Indorsement: Right to Compel Indorsement**

* * *

**Official Comment**

* * *

**Section 7-507. Warranties on Negotiation or Delivery of Document of Title**

* * *

**Official Comment**

* * *

**Section 7-508. Warranties of Collecting Bank as to Documents of Title**

* * *

**Official Comment**

* * *

**Cross References:**

Sections 4-104, 4-203, 4-501 through 4-504, 5-102, and 7-507.

* * *

**Section 7-509. Adequate Compliance with Commercial Contract**

* * *

**Official Comment**

* * *

## PART 6

## WAREHOUSE RECEIPTS AND BILLS OF LADING:

## MISCELLANEOUS PROVISIONS

### Section 7-601. Lost, Stolen, or Destroyed Documents of Title

* * *

**Official Comment**

* * *

### Section 7-602. Judicial Process against Goods Covered by Negotiable Document of Title

* * *

**Official Comment**

* * *

**Cross Reference~~s~~:**

Sections 7-106 and 7-501 through 7-503.

* * *

### Section 7-603. Conflicting Claims; Interpleader

* * *

**Official Comment**

* * *

**Purposes:**

1. The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. *See e.g. Northwestern ~~National~~ Nat'l Sales, Inc. v. Commercial Cold Storage, Inc.*, ~~162 Ga. App. 741,~~ 293 S.E.2d. 30 (Ga. Ct. App. 1982).

* * *

**Cross ~~r~~Reference:**

* * *

## PART 7

## MISCELLANEOUS PROVISIONS

* * *

**Section 7-701. Effective Date**

* * *

**Section 7-702. Repeals**

* * *

**Official Comment**

* * *

**Section 7-703. Applicability**

* * *

**Official Comment**

* * *

**Section 7-704. Savings Clause**

* * *

**Official Comment**

* * *

~~**APPENDIX I**~~
~~**[OMITTED]**~~

# UNIFORM COMMERCIAL CODE

# ARTICLE 8 – INVESTMENT SECURITIES

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**

**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1994 and revised in: (i) 1999, in connection with the revision of Article 9; (ii) 2000, to correct errata; (iii) 2001, in connection with the revision of Article 1; (iv) 2002, to correct errata; (iv) 2003, in connection with the revision of Article 7; (v) 2010, in connection with amendments to Article 9; (vi) 2017, in connection with PEB Commentary No. 19; (vii) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code; and (viii) 2022, in connection with PEB Commentary No. 25.

~~**APPENDIX I**~~
~~[OMITTED]~~

# UNIFORM COMMERCIAL CODE
# ARTICLE 8 – INVESTMENT SECURITIES

## PREFATORY NOTE

* * *

## II. BRIEF OVERVIEW OF REVISED ARTICLE 8

* * *

### B. Direct Holding System

* * *

Certificated versus uncertificated securities. The rules of the 1978 version of Article 8 concerning uncertificated securities have been simplified considerably. The 1978 version added provisions on uncertificated securities parallel to the provisions of the original version of Article 8 dealing with securities represented by certificates. Thus, virtually every section had one set of rules on "certificated securities" and another on "uncertificated securities." The constant juxtaposition of "certificated securities" and "uncertificated securities" has probably led readers to overemphasize the differences. Revised Article 8 has a unitary definition of "security" in Section 8-102(a)(15), which refers to the underlying intangible interest or obligation. In Revised Article 8, the difference between certificated and uncertificated is treated not as an inherent attribute of the security but as a difference in the means by which ownership is evidenced. The terms "certificated" and "uncertificated" security are used in those sections where it is important to distinguish between these two means of evidencing ownership. Revised Article 8 also deletes the provisions of the 1978 version concerning "transaction statements" and "registered pledges." These changes are explained in the Revision Notes 3, 4, and 5, below.

* * *

## III. SCOPE AND APPLICATION OF ARTICLE 8

* * *

### C. Application of Revised Articles 8 and 9 to Common Investments and Investment Arrangements

* * *

4. Bank deposit accounts; brokerage asset management accounts.

* * *

Today, it is common for brokers to maintain securities accounts for their customers, which include arrangements for the customers to hold liquid "cash" assets in the form of money market mutual fund shares. Insofar as the broker is holding money market mutual fund shares for

its customer, the customer has a security entitlement to the money market mutual fund shares. It is also common for brokers to offer their customers an arrangement in which the customer has access to those liquid assets via a deposit account with a bank, whereby shares of the money market fund are redeemed to cover checks drawn on the account. Article 8 applies only to the securities account; the linked bank account remains an account covered by other law. Thus the rights and duties of the customer and the bank are governed not by Article 8, but by the relevant payment system law, such as Article 4 or Article 4A.

* * *

9. Bankers' acceptances, commercial paper, and other money market instruments.

* * *

Some forms of short term money market instruments may meet the requirements of an Article 8 security, while others may not. For example, the Article 8 definition of security requires that the obligation be in registered or bearer form. Bankers' acceptances are typically payable "to order," and thus do not qualify as Article 8 securities. Thus, the obligations of the immediate parties to a ~~bankers'~~ banker's acceptance are governed by Article 3, rather than Article 8. That is an entirely appropriate classification, even for those bankers' ~~acceptance~~ acceptances that are handled as investment media in the securities markets, because Article 8, unlike Article 3, does not contain rules specifying the standardized obligations of parties to instruments. For example, the Article 3 rules on the obligations of acceptors and drawers of drafts are necessary to specify the obligations represented by bankers' acceptances, but Article 8 contains no provisions dealing with these issues.

Immobilization through a depository system is, however, just as important for money market instruments as for traditional securities. Under the prior version of Article 8, the rules on the depository system, set out in Section 8-320, applied only to Article 8 securities. Although some forms of money market instruments could be fitted within the language of the Article 8 definition of "security," this is not true for bankers' acceptances. Accordingly, it was not thought feasible to make bankers' acceptances eligible for deposit in clearing corporations under the prior version of Article 8. Revised Article 8 solves this problem by separating the coverage of the Part 5 rules from the definition of security. Even though a ~~bankers'~~ banker's acceptance or other money market instrument is an Article 3 negotiable instrument rather than an Article 8 security, it would still fall within the definition of financial asset in Section 8-102(a)(9). Accordingly, if the instrument is held through a clearing corporation or other securities intermediary, the rules of Part 5 of Article 8 apply.

* * *

14. "Whatever else they have or may devise."

* * *

A common mechanism by which new financial instruments are devised is that a financial institution that holds some security, financial instrument, or pool thereof, creates interests in that asset or pool which are sold to others. It is not possible to answer in the abstract the question of how such interests are treated under Article 8, because the variety of such products is limited

only by human imagination and current regulatory structures. At this general level, however, one can note that there are at least three possible treatments under Article 8 of the relationship between the institution, which creates the interests, and the persons who hold them. (Again, it must be borne in mind that the Article 8 classification issue may be different from the classification question posed by federal securities law or other regulation.) First, creation of the new interests in the underlying assets may constitute issuance of a new Article 8 security. In that case the relationship between the institution, ~~that~~ which created the interest, and the persons who hold them is not governed by the Part 5 rules, but by the rules of Parts 2, 3, and 4. See Section 8-501(e). That, for example, is the structure of issuance of mutual fund shares. Second, the relationship between the entity creating the interests and those holding them may fit within the Part 5 rules, so that the persons are treating as having security entitlements against the institution with respect to the underlying assets. That, for example, is the structure used for stock options. Third, it may be that the creation of the new interests in the underlying assets does not constitute issuance of a new Article 8 security, nor does the relationship between the entity creating the interests and those holding them fit within the Part 5 rules. In that case, the relationship is governed by other law, as in the case of ordinary trusts.

* * *

**UNIFORM COMMERCIAL CODE**

**REVISED ARTICLE 8 – INVESTMENT SECURITIES**

**PART 1**

**SHORT TITLE AND GENERAL MATTERS**

**Section 8-101. Short Title**

* * *

**Section 8-102. Definitions**

* * *

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

| | |
|---|---|
| "Appropriate person" | Section 8-107 |
| "Control" | Section 8-106 |
| "Controllable account" | Section 9-102 |
| "Controllable electronic record" | Section 12-102 |
| "Controllable payment intangible" | Section 9-102 |
| "Delivery" | Section 8-301 |
| "Investment company security" | Section 8-103 |
| "Issuer " | Section 8-201 |
| "Overissue" | Section 8-210 |
| "Protected purchaser" | Section 8-303 |
| "Securities account" | Section 8-501 |

* * *

**Official Comment**

1. "Adverse claim." The definition of the term "adverse claim" has two components. First, the term refers only to property interests. Second, the term means not merely that a person has a property interest in a financial asset but that it is a violation of the claimant's property

interest for the other person to hold or transfer the security or other financial asset.

* * *

The definition of adverse claim in the prior version of Article 8 might have been read to suggest that any wrongful action concerning a security, even a simple breach of contract, gave rise to an adverse claim. Insofar as such cases as *Fallon v. Wall Street Clearing Corp.*, 586 N.Y.S.2d 953~~, 182 A.D.2d 245,~~ (App. Div. 1992), and *Pentech Intl. v. Wall St. Clearing Co.*, 983 F.2d 441 (2d Cir. 1993), were based on that view, they are rejected by the new definition which explicitly limits the term adverse claim to property interests. Suppose, for example, that A contracts to sell or deliver securities to B, but fails to do so and instead sells or pledges the securities to C. B, the promisee, has an action against A for breach of contract, but absent unusual circumstances the action for breach would not give rise to a property interest in the securities. Accordingly, B does not have an adverse claim. An adverse claim might, however, be based upon principles of equitable remedies that give rise to property claims. It would, for example, cover a right established by other law to rescind a transaction in which securities were transferred. Suppose, for example, that A holds securities and is induced by B's fraud to transfer them to B. Under the law of contract or restitution, A may have a right to rescind the transfer, which gives A a property claim to the securities. If so, A has an adverse claim to the securities in B's hands. By contrast, if B had committed no fraud, but had merely committed a breach of contract in connection with the transfer from A to B, A may have only a right to damages for breach, not a right to rescind. In that case, A would not have an adverse claim to the securities in B's hands.

* * *

10. Good faith. Section ~~1-203~~1-304 provides that "Every contract or duty within [the Uniform Commercial Code] imposes an obligation of good faith in its performance ~~or~~and enforcement." Section 1-102(b)(20) defines "good faith" as "honesty in fact and the observance of reasonable commercial standards of fair dealing." The reference to commercial standards makes clear that assessments of conduct are to be made in light of the commercial setting. The substantive rules of Article 8 have been drafted to take account of the commercial circumstances of the securities holding and processing system. For example, Section 8-115 provides that a securities intermediary acting on an effective entitlement order, or a broker or other agent acting as a conduit in a securities transaction, is not liable to an adverse claimant, unless the claimant obtained legal process or the intermediary acted in collusion with the wrongdoer. This, and other similar provisions, see Sections 8-404 and 8-503(e), do not depend on notice of adverse claims, because it would impair rather than advance the interest of investors in having a sound and efficient securities clearance and settlement system to require intermediaries to investigate the propriety of the transactions they are processing. The good faith obligation does not supplant the standards of conduct established in provisions of this kind.
* * *

13. "Registered form." The definition of "registered form" is substantially the same as in the prior version of Article 8. Like the definition of bearer form, it serves primarily to distinguish Article 8 securities from instruments governed by other law, such as Article 3.

Contrary to the holding in *Highland Cap.~~ital Management~~ Mgmt. LP v. Schneider*, ~~8 N.Y.3d 406~~ 834 N.Y.S.2d 692 (N.Y. 2007), the registrability requirement in the definition of

"registered form," and its parallel in the definition of "security," are satisfied only if books are maintained by or on behalf of the issuer for the purpose of registration of transfer, including the determination of rights under Section 8-207(a) (or if, in the case of a certificated security, the security certificate so states). It is not sufficient that the issuer records ownership, or records transfers thereof, for other purposes. Nor is it sufficient that the issuer, while not in fact maintaining books for the purpose of registration of transfer, could do so, for such is always the case.

* * *

17. "Security entitlement" means the rights and property interest of a person who holds securities or other financial assets through a securities intermediary. A security entitlement is both a package of personal rights against the securities intermediary and an interest in the property held by the securities intermediary. A security entitlement is not, however, a specific property interest in any financial asset held by the securities intermediary or by the clearing corporation through which the securities intermediary holds the financial asset. See Sections 8-104(c) and 8-503. The formal definition of security entitlement set out in subsection (a)(17) of this section is a cross-reference to the rules of Part 5. In a sense, then, the entirety of Part 5 is the definition of security entitlement. The Part 5 rules specify the rights and property interest that comprise a security entitlement.

Rights and obligations relating to a security entitlement are enforceable by action. See Section 1-305(b) and PEB Commentary No. 25~~, dated August 12, 2022~~. The Commentary is available at https://www.ali.org/peb-ucc.

* * *

**Definitional Cross References:**

* * *

**Section 8-103. Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

* * *

**Section 8-104. Acquisition of Security or Financial Asset or Interest Therein**

* * *

**Official Comment**

* * *

Subsection (b) specifies how a person may acquire an interest under Article 8 in a financial asset other than a security. This Article deals with financial assets other than securities only insofar as they are held in the indirect holding system. For example, a ~~bankers'~~ banker's acceptance falls within the definition of "financial asset," so if it is held through a securities account the entitlement holder's right to it is a security entitlement governed by Part 5. The ~~bankers'~~ banker's acceptance itself, however, is a negotiable instrument governed by Article 3, not by Article 8. Thus, the provisions of Parts 2, 3, and 4 of this Article that deal with the rights of direct holders of securities are not applicable. Article 3, not Article 8, specifies how one acquires a direct interest in a ~~bankers'~~ banker's acceptance. If a ~~bankers'~~ banker's acceptance is delivered to a clearing corporation to be held for the account of the clearing corporation's participants, the clearing corporation becomes the holder of the ~~bankers'~~ banker's acceptance under the Article 3 rules specifying how negotiable instruments are transferred. The rights of the clearing corporation's participants, however, are governed by Part 5 of this Article.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Delivery" | Section 8-301 |
| "Financial asset" | Section 8-102(a)(9) |
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-105. Notice of Adverse Claim**

* * *

**Official Comment**

* * *

4. Paragraph (a)(2) provides that a person has notice of an adverse claim if the person is aware of a significant probability that an adverse claim exists and deliberately avoids information that might establish the existence of the adverse claim. This is intended to codify the "willful blindness" test that has been applied in such cases. See *May v. Chapman*, ~~16 M. & W. 355,~~ 153 Eng. Rep. 1225 (1847); *Goodman v. Simonds*, 61 U.S. 343 (1857).

* * *

6. Subsection (b) provides explicitly for some situations involving purchase from one described or identifiable as a representative. Knowledge of the existence of the representative relation is not enough in itself to constitute "notice of an adverse claim" that would disqualify the purchaser from protected purchaser status. A purchaser may take a security on the inference that the representative is acting properly. Knowledge that a security is being transferred to an

individual account of the representative or that the proceeds of the transaction will be paid into that account is not sufficient to constitute "notice of an adverse claim," but knowledge that the proceeds will be applied to the personal indebtedness of the representative is. See *State Bank of Binghamton v. Bache*, ~~162 Misc. 128,~~ 293 N.Y.S. 667 (Sup. Ct. 1937).

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Bearer form" | Section 8-102(a)(2) |
| "Certificated security" | Section 8-102(a)(4) |
| "Financial asset" | Section 8-102(a)(9) |
| "Knowledge" | Section ~~1-201(25)~~1-202(b) |
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Registered form" | Section 8-102(a)(13) |
| "Representative" | Section ~~1-201(35)~~1-201(b)(33) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-106. Control**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Bearer form" | Section 8-102(a)(2) |
| "Certificated security" | Section 8-102(a)(4) |
| "Delivery" | Section 8-301 |
| "Effective" | Section 8-107 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Entitlement order" | Section 8-102(a)(8) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Registered form" | Section 8-102(a)(13) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-107. Whether Indorsement, Instruction, or Entitlement Order Is Effective**

* * *

**Official Comment**

* **

**Definitional Cross References:**

| | |
|---|---|
| "Entitlement order" | Section 8-102(a)(8) |
| "Financial asset" | Section 8-102(a)(9) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Representative" | Section ~~1-201(35)~~1-201(b)(33) |
| "Securities account" | Section 8-501 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-108. Warranties in Direct Holding**

* * *

**Official Comment**

* * *

5. Under Section ~~1-102(3)~~1-302(a) the warranty provisions apply "unless otherwise agreed" and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Appropriate person" | Section 8-107 |
| "Broker" | Section 8-102(a)(3) |
| "Certificated security" | Section 8-102(a)(4) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Issuer" | Section 8-201 |
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Secured party" | Section 9-102(a)~~(72)~~(73) |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-109. Warranties in Indirect Holding**

* * *

**Official Comment**

* * *

3. As with the Section 8-108 warranties, the warranties specified in this section may be modified by agreement under Section ~~1-102(3)~~1-302(a).

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Appropriate person" | Section 8-107 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Entitlement order" | Section 8-102(a)(8) |
| "Instruction" | Section 8-102(a)(12) |
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Securities account" | Section 8-501 |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-110. Applicability; Choice of Law**

* * *

**Official Comment**

* * *

2. Subsection (a) provides that the law of an issuer's jurisdiction governs certain issues where the substantive rules of Article 8 determine the issuer's rights and duties. Paragraph (1) of subsection (a) provides that the law of the issuer's jurisdiction governs the validity of the security. This ensures that a single body of law will govern the questions addressed in Part 2 of Article 8, concerning the circumstances in which an issuer can and cannot assert invalidity as a defense against purchasers. Similarly, paragraphs (2), (3), and (4) of subsection (a) ensure that the issuer will be able to look to a single body of law on the questions addressed in Part 4 of Article 8, concerning the issuer's duties and liabilities with respect to registration of transfer.

* * *

Although subsection (a) provides that the issuer's rights and duties concerning registration of transfer are governed by the law of the issuer's jurisdiction, other matters related to registration of transfer, such as appointment of a guardian for a registered owner or the existence of agency relationships, might be governed by another jurisdiction's law. Neither this section nor ~~Section 1-105 (Revised~~ Section 1-301~~)~~ deals with what law governs the appointment of the administrator or executor; that question is determined under generally applicable choice of law rules.

* * *

5. The following examples illustrate how a forum applying these rules would determine

the governing law:

* * *

**Example 3~~:~~.** John Doe, a resident of Kansas, maintains a securities account with Able & Co. Able is organized in Switzerland and has its chief executive offices there. The agreement between Doe and Able provides that New York is the securities intermediary's jurisdiction for purposes of UCC Article 8. The agreement was entered into before the Hague Securities Convention's effectiveness in the United States, does not expressly provide that New York or any other law is applicable to all the issues specified in article 2(1) of the Hague Securities Convention, and does not otherwise expressly refer to the Convention. Through the account, Doe holds securities of a Japanese issuer. Roe, who lives in Japan, claims ownership of the securities and seeks to hold Able liable for not transferring the asset to Roe. Because the agreement between Doe and Able was entered into before the Convention's effectiveness in the United States, Convention article 16(3) specifies that the controversy between Roe and Able is governed by the law of New York, but only if at the time of the agreement between Doe and Able, Able had an office in the United States engaged in a regular activity of maintaining securities accounts.

* * *

**Definitional Cross References~~:~~:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Certificated security" | Section 8-102(a)(4) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Issuer" | Section 8-201 |
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Purchase" | Section ~~1-201(32)~~1-201(b)(29) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-111. Clearing Corporation Rules**

* * *

**Official Comment**

1. The experience of the past few decades shows that securities holding and settlement practices may develop rapidly, and in unforeseeable directions. Accordingly, it is desirable that the rules of Article 8 be adaptable both to ensure that commercial law can conform to changing practices and to ensure that commercial law does not operate as an obstacle to developments in securities practice. Even if practices were unchanging, it would not be possible in a general statute to specify in detail the rules needed to provide certainty in the operations of the clearance

and settlement system.

The provisions of this Article and Article 1 on the effect of agreements provide considerable flexibility in the specification of the details of the rights and obligations of participants in the securities holding system by agreement. See Sections 8-504 through 8-509, and Section ~~1-102(3) and (4)~~1-302. Given the magnitude of the exposures involved in securities transactions, however, it may not be possible for the parties in developing practices to rely solely on private agreements, particularly with respect to matters that might affect others, such as creditors. For example, in order to be fully effective, rules of clearing corporations on the finality or reversibility of securities settlements must not only bind the participants in the clearing corporation but also be effective against their creditors. Section 8-111 provides that clearing corporation rules are effective even if they indirectly affect third parties, such as creditors of a participant. This provision does not, however, permit rules to be adopted that would govern the rights and obligations of third parties other than as a consequence of rules that specify the rights and obligations of the clearing corporation and its participants.

* * *

**Definitional Cross Reference~~s~~:**

| | |
|---|---|
| "Clearing corporation" | Section 8-102(a)(5) |

**Section 8-112. Creditor's Legal Process**

* * *

**Official Comment**

1. In dealing with certificated securities the instrument itself is the vital thing, and therefore a valid levy cannot be made unless all possibility of the certificate's wrongfully finding its way into a transferee's hands has been removed. This can be accomplished only when the certificate is in the possession of a public officer, the issuer, or an independent third party. A debtor who has been enjoined can still transfer the security in contempt of court. See *Overlock v. Jerome-Portland Copper Mining Co.*, ~~29 Ariz. 560,~~ 243 P. 400 (Ariz. 1926). Therefore, although injunctive relief is provided in subsection (e) so that creditors may use this method to gain control of the certificated security, the security certificate itself must be reached to constitute a proper levy whenever the debtor has possession.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Issuer" | Section 8-201 |
| "Secured party" | Section 9-102(a)~~(72)~~(73) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security certificate" | Section 8-102(a)(16) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-113. Statute of Frauds Inapplicable**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Action" | Section ~~1-201(1)~~1-201(b)(1) |
| "Contract" | Section ~~1-201(11)~~1-201(b)(11) |
| "Writing" | Section ~~1-201(46)~~1-201(b)(43) |

**Section 8-114. Evidentiary Rules Concerning Certificated Securities**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Action" | Section ~~1-201(1)~~1-201(b)(1) |
| "Burden of establishing" | Section ~~1-201(8)~~1-201(b)(8) |
| "Certificated security" | Section 8-102(a)(4) |
| "Indorsement" | Section 8-102(a)(11) |
| "Issuer" | Section 8-201 |
| "Presumed" | Section ~~1-201(31)~~1-206 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-115. Securities Intermediary and Others Not Liable to Adverse Claimant**

* * *

**Official Comment**

* * *

3. Except as provided in paragraph 3, this section applies even though the securities intermediary, or the broker or other agent or bailee, had notice or knowledge that another person asserts a claim to the securities. Consider the following examples:

* * *

Section 8-115 protects Able and Baker from liability. The protections of Section 8-115 do not depend on the presence or absence of notice of adverse claims. It is essential to the securities settlement system that brokers and securities intermediaries be able to act promptly on the

directions of their customers. Even though a firm has notice that someone asserts a claim to a customer's securities or security entitlements, the firm should not be placed in the position of having to make a legal judgment about the validity of the claim at the risk of liability either to its customer or to the third party for guessing wrong. Under this section, the broker or securities intermediary is privileged to act on the instructions of its customer or entitlement holder, unless it has been served with a restraining order or other legal process enjoining it from doing so. This is already the law in many jurisdictions. For example a section of the New York Banking Law provides that banks need not recognize any adverse claim to funds or securities on deposit with them unless they have been served with legal process. N.Y. Banking Law § 134. Other sections of the UCC embody a similar policy. See Sections 3-602, ~~5-114(2)(b)~~5-109(a)(2).

* * *

**Definitional Cross References:**

* * *

**Section 8-116. Securities Intermediary as Purchaser for Value**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

* * *

**PART 2**
**ISSUE AND ISSUER**

**Section 8-201. Issuer**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Person" | Section ~~1-201(30)~~1-201(b)(27) |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-202. Issuer's Responsibility and Defenses; Notice of Defect or Defense**

* * *

**Official Comment**

* * *

Courts have generally held that an issuer is estopped from denying representations made in the text of a security. *Delaware-New Jersey Ferry Co. v. Leeds*, ~~21 Del.Ch. 279,~~ 186 A. 913 (Del. Ch. Ct. 1936). Nor is a defect in form or the invalidity of a security normally available to the issuer as a defense. *Bonini v. Family Theatre Corp.~~oration~~*, ~~327 Pa. 273,~~ 194 A. 498 (Pa. 1937); *First ~~National~~Nat'l Bank of Fairbanks v. Alaska Airmotive, Inc.*, 119 F.2d 267 (~~C.C.A.Alaska~~9th Cir. 1941).

* * *

3. The penultimate sentence of subsection (a) and all of subsection (b) embody the concept that it is the duty of the issuer, not of the purchaser, to make sure that the security complies with the law governing its issue. The penultimate sentence of subsection (a) makes clear that the issuer cannot, by incorporating a reference to a statute or other document, charge the purchaser with notice of the security's invalidity. Subsection (b) gives to a purchaser for value without notice of the defect the right to enforce the security against the issuer despite the presence of a defect that otherwise would render the security invalid. There are three circumstances in which a purchaser does not gain such rights: first, if the defect involves a violation of constitutional provisions, these rights accrue only to a subsequent purchaser, that is, one who takes other than by original issue. This Article leaves to the law of each particular State the rights of a purchaser on original issue of a security with a constitutional defect. No negative implication is intended by the explicit grant of rights to a subsequent purchaser.

Second, governmental issuers are distinguished in subsection (b) from other issuers as a matter of public policy, and additional safeguards are imposed before governmental issues are validated. Governmental issuers are estopped from asserting defenses only if there has been substantial compliance with the legal requirements governing the issue or if substantial consideration has been received and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security. The purpose of the substantial compliance requirement is to make certain that a mere technicality as, e.g., in the manner of publishing election notices, shall not be a ground for depriving an innocent purchaser of rights in the security. The policy is here adopted of such cases as *Tommie v. City of Gadsden*, ~~229 Ala. 521,~~ 158 So. 763 (Ala. 1935), in which minor discrepancies in the form of the election ballot used were overlooked and the bonds were declared valid since there had been substantial compliance with the statute.

A long and well established line of federal cases recognizes the principle of estoppel in favor of purchasers for value without notices where municipalities issue bonds containing recitals of compliance with governing constitutional and statutory provisions, made by the municipal authorities entrusted with determining such compliance. *Chaffee ~~County~~ Cnty. v. Potter*, 142 U.S. 355 (1892); *Oregon v. Jennings*, 119 U.S. 74 (1886); *Gunnison ~~County~~ Cnty. Comm'rs~~issioners~~ v. Rollins*, 173 U.S. 255 (1898). This rule has been qualified, however, by requiring that the municipality have power to issue the security. *Anthony v. County of Jasper*, 101 U.S. 693 (1879); *Town of South Ottawa v. Perkins*, 94 U.S. 260 (1876). This section follows the case law trend, simplifying the rule by setting up two conditions for an estoppel against a governmental issuer: (1) substantial consideration given, and (2) power in the issuer to borrow money or issue the security for the stated purpose. As a practical matter the problem of policing

governmental issuers has been alleviated by the present practice of requiring legal opinions as to the validity of the issue. The bulk of the case law on this point is nearly 100 years old and it may be assumed that the question now seldom arises.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Uncertificated security" | Section 8-102(a)(18) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-203. Staleness as Notice of Defect or Defense**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-204. Effect of Issuer's Restriction on Transfer**

* * *

**Official Comment**

* * *

5. This section deals only with restrictions imposed by the issuer. Restrictions imposed by statute are not affected. See *Quiner v. Marblehead Social Co.*, 10 Mass. 476 (1813); *Madison Bank v. Price*, ~~79 Kan. 289,~~ 100 P. 280 (Kan. 1909); *Healey v. Steele Center Creamery Ass'n*, ~~115 Minn. 451,~~ 133 N.W. 69 (Minn. 1911). Nor does it deal with private agreements between stockholders containing restrictive covenants as to the sale of the security.

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |

| | |
|---|---|
| "Conspicuous" | Section ~~1-201(10)~~1-201(b)(10) |
| "Issuer" | Section 8-201 |
| "Knowledge" | Section ~~1-201(25)~~1-202(b) |
| "~~Notify~~Notifies" | Section ~~1-201(25)~~1-202(d) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-205. Effect of Unauthorized Signature on Security Certificate**

* * *

**Official Comment**

1. The problem of forged or unauthorized signatures may arise where an employee of the issuer, transfer agent, or registrar has access to securities which the employee is required to prepare for issue by affixing the corporate seal or by adding a signature necessary for issue. This section is based upon the issuer's duty to avoid the negligent entrusting of securities to such persons. Issuers have long been held responsible for signatures placed upon securities by parties whom they have held out to the public as authorized to prepare such securities. See *Fifth Avenue Bank of New York v. The Forty-Second & Grand Street Ferry ~~Railroad~~ R.R. ~~Co.~~*, ~~137 N.Y. 231,~~ 33 N.E. 378~~, 19 L.R.A. 331, 33 Am.St.Rep. 712~~ (N.Y. 1893); *Jarvis v. Manhattan Beach Co.*, ~~148 N.Y. 652,~~ 43 N.E. 68~~, 31 L.R.A. 776, 51 Am.St.Rep. 727~~ (N.Y. 1896). The "apparent authority" concept of some of the case-law, however, is here extended and this section expressly rejects the technical distinction, made by courts reluctant to recognize forged signatures, between cases where forgers sign signatures they are authorized to sign under proper circumstances and those in which they sign signatures they are never authorized to sign. *Citizens' & Southern National Bank v. Trust Co. of Georgia*, ~~50 Ga.App. 681,~~ 179 S.E. 278 (Ga. Ct. App. 1935). Normally the purchaser is not in a position to determine which signature a forger, entrusted with the preparation of securities, has "apparent authority" to sign. The issuer, on the other hand, can protect itself against such fraud by the careful selection and bonding of agents and employees, or by action over against transfer agents and registrars who in turn may bond their personnel.

2. The issuer cannot be held liable for the honesty of employees not entrusted, directly or indirectly, with the signing, preparation, or responsible handling of similar securities and whose possible commission of forgery it has no reason to anticipate. The result in such cases as *Hudson Trust Co. v. American Linseed Co.*, ~~232 N.Y. 350,~~ 134 N.E. 178 (N.Y. 1922), and *Dollar Savings Fund & Trust Co. v. Pittsburgh Plate Glass Co.*, ~~213 Pa. 307,~~ 62 A. 916~~, 5 Ann.Cas. 248~~ (Pa. 1906), is here adopted.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Issuer" | Section 8-201 |
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security certificate" | Section 8-102(a)(14) |
| "Unauthorized signature" | Section ~~1-201(43)~~1-201(b)(41) |

**Section 8-206. Completion or Alteration of Security Certificate**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security certificate" | Section 8-102(a)(16) |
| "Unauthorized signature" | Section ~~1-201(43)~~1-201(b)(41) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-207. Rights and Duties of Issuer with Respect to Registered Owners**

* * *

**Official Comment**

* * *

2. Subsection (a) is permissive and does not require that the issuer deal exclusively with the registered owner. It is free to require proof of ownership before paying out dividends or the like if it chooses to. *Barbato v. Breeze Corp.~~oration~~*, ~~128 N.J.L. 309,~~ 26 A.2d 53 (N.J. 1942).

* * *

4. No change in existing state laws as to the liability of registered owners for calls and assessments is here intended; nor is anything in this section designed to estop record holders from denying ownership when assessments are levied if they are otherwise entitled to do so under state law. See *State ex rel. Squire v. Murfey, Blosson & Co.*, ~~131 Ohio St. 289,~~ 2 N.E.2d 866 (Ohio 1936); *Willing v. Delaplaine*, 23 ~~F.Supp.~~F. Supp. 579 (E.D. Pa. 1937).

* * *

**Definitional Cross References:**

* * *

**Section 8-208. Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent**

* * *

**Official Comment**

1. The warranties here stated express the current understanding and prevailing case law as to the effect of the signatures of authenticating trustees, transfer agents, and registrars. See *Jarvis v. Manhattan Beach Co.*, ~~148 N.Y. 652,~~ 43 N.E. 68~~, 31 L.R.A. 776, 51 Am.St.Rep. 727~~ (N.Y. 1896). Although it has generally been regarded as the particular obligation of the transfer agent to determine whether securities are in proper form as provided by the by-laws and Articles of Incorporation, neither a registrar nor an authenticating trustee should properly place a signature upon a certificate without determining whether it is at least regular on its face. The obligations of these parties in this respect have therefore been made explicit in terms of due care. See *Feldmeier v. Mortgage Securities, Inc.*, ~~34 Cal.App.2d 201,~~ 93 P.2d 593 (Cal. Ct. App. 1939).

2. Those cases which hold that an authenticating trustee is not liable for any defect in the mortgage or property which secures the bond or for any fraudulent misrepresentations made by the issuer are not here affected since these matters do not involve the genuineness or proper form of the security. *Ainsa v. Mercantile Trust Co.*, ~~174 Cal. 504,~~ 163 P. 898 (Cal. 1917); *Tschetinian v. City Trust Co.*, ~~186 N.Y. 432,~~ 79 N.E. 401 (N.Y. 1906); *Davidge v. Guardian Trust Co. of New York*, ~~203 N.Y. 331,~~ 96 N.E. 751 (N.Y. 1911).

* * *

4. Authenticating trustees, registrars, and transfer agents have normally been held liable for an issue in excess of the authorized amount. *Jarvis v. Manhattan Beach Co.*, supra; *Mullen v. Eastern Trust & Banking Co.*, ~~108 Me. 498,~~ 81 A. 948 (Me. 1911). In imposing upon these parties a duty of due care with respect to the amount they are authorized to help issue, this section does not necessarily validate the security, but merely holds persons responsible for the excess issue liable in damages for any loss suffered by the purchaser.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Genuine" | Section ~~1-201(18)~~1-201(b)(19) |
| "Issuer" | Section 8-201 |
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-209. Issuer's Lien**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Issuer" | Section 8-201 |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-210. Overissue**

* * *

**Official Comment**

1. Deeply embedded in corporation law is the conception that "corporate power" to issue securities stems from the statute, either general or special, under which the corporation is organized. Corporation codes universally require that the charter or articles of incorporation state, at least as to capital shares, maximum limits in terms of number of shares or total dollar capital. Historically, special incorporation statutes are similarly drawn and sometimes similarly limit the face amount of authorized debt securities. The theory is that issue of securities in excess of the authorized amounts is prohibited. See, for example, *McWilliams v. Geddes & Moss Undertaking Co.*, 169 So. 894 (~~1936,~~ La. 1936); *Crawford v. Twin City Oil Co.*, ~~216 Ala. 216,~~ 113 So. 61 (Ala. 1927); *New York ~~and~~ & New Haven R.R. ~~Co.~~ v. Schuyler*, 34 N.Y. 30 (1865). This conception persists despite modern corporation codes under which, by action of directors and stockholders, additional shares can be authorized by charter amendment and thereafter issued. This section does not give a person entitled to validation, issue, or reissue of a security, the right to compel amendment of the charter to authorize additional shares. Therefore, in a case where issue of an additional security would require charter amendment, the plaintiff is limited to the two alternate remedies set forth in subsections (c) and (d). The last clause of subsection (a), which is added in Revised Article 8, does, however, recognize that under modern conditions, overissue may be a relatively minor technical problem that can be cured by appropriate action under governing corporate law.

2. Where an identical security is reasonably available for purchase, whether because traded on an organized market, or because one or more security owners may be willing to sell at a not unreasonable price, the issuer, although unable to issue additional shares, will be able to purchase them and may be compelled to follow that procedure. *West v. Tintic Standard Mining Co.*, ~~71 Utah 158,~~ 263 P. 490 (Utah 1928).

3. The right to recover damages from an issuer who has permitted an overissue to occur is well settled. *New York ~~and~~ & New Haven R.R. ~~Co.~~ v. Schuyler*, 34 N.Y. 30 (1865). The measure of such damages, however, has been open to question, some courts basing them upon the value of stock at the time registration is refused; some upon the value at the time of trial; and some upon the highest value between the time of refusal and the time of trial. *Allen v. South Boston Railroad*, ~~150 Mass. 200,~~ 22 N.E. 917~~, 5 L.R.A. 716, 15 Am.St.Rep. 185~~ (Mass. 1889); *Commercial Bank v. Kortright,* 22 Wend. (N.Y.) 348 (1839). The purchase price of the security to the last purchaser who gave value for it is here adopted as being the fairest means of reducing the possibility of speculation by the purchaser. Interest may be recovered as the best available measure of compensation for delay.

**Definitional Cross References:**

* * *

## PART 3

## TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

### Section 8-301. Delivery

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Effective" | Section 8-107 |
| "Issuer" | Section 8-201 |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Registered form" | Section 8-102(a)(13) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security certificate" | Section 8-102(a)(16) |
| "Special indorsement" | Section 8-304(a) |
| "Uncertificated security" | Section 8-102(a)(18) |

### Section 8-302. Rights of Purchaser

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Certificated security" | Section 8-102(a)(4) |
| "Notice of adverse claim" | Section 8-105 |
| "Protected purchaser" | Section 8-303 |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Uncertificated security" | Section 8-102(a)(18) |
| "Delivery" | Section 8-301 |

### Section 8-303. Protected Purchaser

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Certificated security" | Section 8-102(a)(4) |
| "Control" | Section 8-106 |
| "Notice of adverse claim" | Section 8-105 |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Uncertificated security" | Section 8-102(a)(18) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-304. Indorsement**

* * *

**Official Comment**

* * *

3. Subsection (c) deals with the effect of an indorsement without delivery. There must be a voluntary parting with control in order to effect a valid transfer of a certificated security as between the parties. *Levey v. Nason*, ~~279 Mass. 268,~~ 181 N.E. 193 (Mass. 1932)~~,~~ ~~and~~ *National Surety Co. v. Indemnity Ins.* ~~*urance*~~ *Co. of N.* ~~*orth*~~ *Am.*~~*erica*~~, ~~237 App.Div. 485,~~ 261 N.Y.S. 605 (App. Div. 1933). The provision in Section 10 of the Uniform Stock Transfer Act that an attempted transfer without delivery amounts to a promise to transfer is omitted. Even under that Act the effect of such a promise was left to the applicable law of contracts, and this Article by making no reference to such situations intends to achieve a similar result. With respect to delivery there is no counterpart to subsection (d) on right to compel indorsement, such as is envisaged in *Johnson v. Johnson*, ~~300 Mass. 24,~~ 13 N.E.2d 788 (Mass. 1938), where the transferee under a written assignment was given the right to compel a transfer of the certificate.

4. Subsection (d) deals with the effect of delivery without indorsement. As between the parties the transfer is made complete upon delivery, but the transferee cannot become a protected purchaser until indorsement is made. The indorsement does not operate retroactively, and notice may intervene between delivery and indorsement so as to prevent the transferee from becoming a protected purchaser. Although a purchaser taking without a necessary indorsement may be subject to claims of ownership, any issuer's defense of which the purchaser had no notice at the time of delivery will be cut off, since the provisions of this Article protect all purchasers for value without notice (Section 8-202).

The transferee's right to compel an indorsement where a security certificate has been delivered with intent to transfer is recognized in the case law. See *Coats v. Guaranty Bank & Trust Co.*, ~~170 La. 871,~~ 129 So. 513 (La. 1930). A proper indorsement is one of the requisites of transfer which a purchaser of a certificated security has a right to obtain (Section 8-307). A purchaser may not only compel an indorsement under that section but may also recover for any reasonable expense incurred by the transferor's failure to respond to the demand for an

indorsement.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Bearer form" | Section 8-102(a)(2) |
| "Certificated security" | Section 8-102(a)(4) |
| "Indorsement" | Section 8-102(a)(11) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Registered form" | Section 8-102(a)(13) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-305. Instruction**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Appropriate person" | Section 8-107 |
| "Instruction" | Section 8-102(a)(12) |
| "Issuer" | Section 8-201 |

**Section 8-306. Effect of Guaranteeing Signature, Indorsement, or Instruction**

* * *

**Official Comment**

* * *

2. The rationale of the principle that a signature guarantor warrants the authority of the signer, rather than simply the genuineness of the signature, was explained in the leading case of *Jennie Clarkson Home for Children v. Missouri, K. & T. R. Co.*, ~~182 N.Y. 47,~~ 74 N.E. 571~~, 70 A.L.R. 787~~ (N.Y. 1905), which dealt with a guaranty of the signature of a person indorsing on behalf of a corporation. "If stock is held by an individual who is executing a power of attorney for its transfer, the member of the exchange who signs as a witness thereto guaranties not only the genuineness of the signature affixed to the power of attorney, but that the person signing is the individual in whose name the stock stands. With reference to stock standing in the name of a corporation, which can only sign a power of attorney through its authorized officers or agents, a different situation is presented. If the witnessing of the signature of the corporation is only that of the signature of a person who signs for the corporation, then the guaranty is of no value, and there is nothing to protect purchasers or the companies who are called upon to issue new stock in the place of that transferred from the frauds of persons who have signed the names of corporations without authority. If such is the only effect of the guaranty, purchasers and transfer

agents must first go to the corporation in whose name the stock stands and ascertain whether the individual who signed the power of attorney had authority to so do. This will require time, and in many cases will necessitate the postponement of the completion of the purchase by the payment of the money until the facts can be ascertained. The broker who is acting for the owner has an opportunity to become acquainted with his customer, and may readily before sale ascertain, in case of a corporation, the name of the officer who is authorized to execute the power of attorney. It was therefore, we think, the purpose of the rule to cast upon the broker who witnesses the signature the duty of ascertaining whether the person signing the name of the corporation had authority to so do, and making the witness a guarantor that it is the signature of the corporation in whose name the stock stands."

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Appropriate person" | Section 8-107 |
| "Genuine" | Section ~~1-201(18)~~1-201(b)(19) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Issuer" | Section 8-201 |
| "Security certificate" | Section 8-102(a)(16) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-307. Purchaser's Right to Requisites for Registration of Transfer**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Security" | Section 8-102(a)(15) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**PART 4**

**REGISTRATION**

**Section 8-401. Duty of Issuer to Register Transfer**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Appropriate person" | Section 8-107 |
| "Certificated security" | Section 8-102(a)(4) |
| "Genuine" | Section ~~1-201(18)~~1-201(b)(19) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Issuer" | Section 8-201 |
| "Protected purchaser" | Section 8-303 |
| "Registered form" | Section 8-102(a)(13) |
| "Uncertificated security" | Section 8-102(a)(18) |

**Section 8-402. Assurance That Indorsement or Instruction Is Effective**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Appropriate person" | Section 8-107 |
| "Genuine" | Section ~~1-201(18)~~1-201(b)(19) |
| "Indorsement" | Section 8-102(a)(11) |
| "Instruction" | Section 8-102(a)(12) |
| "Issuer" | Section 8-201 |

**Section 8-403. Demand That Issuer Not Register Transfer**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

* * *

**Section 8-404. Wrongful Registration**

* * *

**Official Comment**

1. Subsection (a)(1) provides that an issuer is liable if it registers transfer pursuant to an indorsement or instruction that was not effective. For example, an issuer that registers transfer on a forged indorsement is liable to the registered owner. The fact that the issuer had no reason to

suspect that the indorsement was forged or that the issuer obtained the ordinary assurances under Section 8-402 does not relieve the issuer from liability. The reason that issuers obtain signature guaranties and other assurances is that they are liable for wrongful registration.

Subsection (b) specifies the remedy for wrongful registration. Pre-Code cases established the registered owner's right to receive a new security where the issuer had wrongfully registered a transfer, but some cases also allowed the registered owner to elect between an equitable action to compel issue of a new security and an action for damages. Cf. *Casper v. Kalt-Zimmers Mfg. Co.*, ~~159 Wis. 517,~~ 149 N.W. 754 (Wis. 1914). Article 8 does not allow such election. The true owner of a certificated security is required to take a new security except where an overissue would result and a similar security is not reasonably available for purchase. See Section 8-210. The true owner of an uncertificated security is entitled and required to take restoration of the records to their proper state, with a similar exception for overissue.

* * *

**Definitional Cross References:**

* * *

**Section 8-405. Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate**

* * *

**Official Comment**

* * *

2. Where an "original" security certificate has reached the hands of a protected purchaser, the registered owner – who was in the best position to prevent the loss, destruction or theft of the security certificate – is now deprived of the new security certificate issued as a replacement. This changes the pre-UCC law under which the original certificate was ineffective after the issue of a replacement except insofar as it might represent an action for damages in the hands of a purchaser for value without notice. *Keller v. Eureka Brick Mach. Mfg. Co.*, 43 Mo. App. 84~~, 11 L.R.A. 472~~ (1890). Where both the original and the new certificate have reached protected purchasers the issuer is required to honor both certificates unless an overissue would result and the security is not reasonably available for purchase. See Section 8-210. In the latter case alone, the protected purchaser of the original certificate is relegated to an action for damages. In either case, the issuer itself may recover on the indemnity bond.

**Definitional Cross References:**

| | |
|---|---|
| "Bearer form" | Section 8-102(a)(2) |
| "Certificated security" | Section 8-102(a)(4) |
| "Issuer" | Section 8-201 |
| "Notice" | Section ~~1-201(25)~~1-202(a) |
| "Overissue" | Section 8-210 |

| | |
|---|---|
| "Protected purchaser" | Section 8-303 |
| "Registered form" | Section 8-102(a)(13) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-406. Obligation to Notify Issuer of Lost, Destroyed, or Wrongfully Taken Security Certificate**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Issuer" | Section 8-201 |
| "~~Notify~~Notifies" | Section ~~1-201(25)~~1-202(d) |
| "Security certificate" | Section 8-102(a)(16) |

**Section 8-407. Authenticating Trustee, Transfer Agent, and Registrar**

* * *

**Official Comment**

1. Transfer agents, registrars, and the like are here expressly held liable both to the issuer and to the owner for wrongful refusal to register a transfer as well as for wrongful registration of a transfer in any case within the scope of their respective functions where the issuer would itself be liable. Those cases which have regarded these parties solely as agents of the issuer and have therefore refused to recognize their liability to the owner for mere non-feasance, i.e., refusal to register a transfer, are rejected. *Hulse v. Consolidated Quicksilver Mining Corp.*, ~~65 Idaho 768,~~ 154 P.2d 149 (Idaho 1944); *Nicholson v. Morgan*, ~~119 Misc. 309,~~ 196 ~~N.Y.Supp.~~N.Y.S. 147 (Mun. Ct. 1922); *Lewis v. Hargadine-McKittrick Dry Goods Co.*, ~~305 Mo. 396,~~ 274 S.W. 1041 (Mo. 1924).

2. The practice frequently followed by authenticating trustees of issuing certificates of indebtedness rather than authenticating duplicate certificates where securities have been lost or stolen became obsolete in view of the provisions of Section 8-405, which makes express provision for the issue of substitute securities. It is not a breach of trust or lack of due diligence for trustees to authenticate new securities. Cf. *Switzerland Gen.~~eral~~ Ins. Co. v. N.Y.C. & H.R.R. Co.*, ~~152 App.Div. 70,~~ 136 N.Y.S. 726 (App. Div. 1912).

**Definitional Cross References:**

* * *

**PART 5**

**SECURITY ENTITLEMENTS**

**Section 8-501. Securities Account; Acquisition of Security Entitlement From Securities Intermediary**

* * *

**Official Comment**

* * *

6. ~~**Enforceability of Rights and Obligations.**~~ Rights and obligations relating to a security entitlement are enforceable by action. See Section 1-305(b) and PEB Commentary No. 25~~, dated August 12, 2022~~. ~~The Commentary is available at https://www.ali.org/peb-ucc.~~

**Definitional Cross References:**

* * *

**Section 8-502. Assertion of Adverse Claim against Entitlement Holder**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Financial asset" | Section 8-102(a)(9) |
| "Notice of adverse claim" | Section 8-105 |
| "Security entitlement" | Section 8-102(a)(17) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-503. Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary**

* * *

**Official Comment**

* * *

Rather than imposing duties to investigate, the general policy of the commercial law of the securities holding and transfer system has been to eliminate legal rules that might induce participants to conduct investigations of the authority of persons transferring securities on behalf of others for fear that they might be held liable for participating in a wrongful transfer. The rules in Part 4 of Article 8 concerning transfers by fiduciaries provide a good example. Under *Lowry v. Commercial & Farmers' Bank*, 15 F. Cas. 1040 (~~C.C.D.~~Cir. Ct. Md. 1848)~~ (No. 8551)~~, an issuer

could be held liable for wrongful transfer if it registered transfer of securities by a fiduciary under circumstances where it had any reason to believe that the fiduciary may have been acting improperly. In one sense that seems to be advantageous for beneficiaries who might be harmed by wrongful conduct by fiduciaries. The consequence of the *Lowry* rule, however, was that in order to protect against risk of such liability, issuers developed the practice of requiring extensive documentation for fiduciary stock transfers, making such transfers cumbersome and time consuming. Accordingly, the rules in Part 4 of Article 8, and in the prior fiduciary transfer statutes, were designed to discourage transfer agents from conducting investigations into the rightfulness of transfers by fiduciaries.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Control" | Section 8-106 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Insolvency ~~proceedings~~proceeding" | Section ~~1-201(22)~~1-201(b)(22) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-504. Duty of Securities Intermediary to Maintain Financial Asset**

* * *

**Official Comment**

* * *

4. The "agreement/due care" provision in subsection (c) of this section is necessary to provide sufficient flexibility to accommodate the general duty stated in subsection (a) to the wide variety of circumstances that may be encountered in the modern securities holding system. For the most common forms of publicly traded securities, the modern depository-based indirect holding system has made the likelihood of an actual loss of securities remote, though correctable errors in accounting or temporary interruptions of data processing facilities may occur. Indeed, one of the reasons for the evolution of book-entry systems is to eliminate the risk of loss or destruction of physical certificates. There are, however, some forms of securities and other financial assets which must still be held in physical certificated form, with the attendant risk of loss or destruction. Risk of loss or delay may be a more significant consideration in connection with foreign securities. An American securities intermediary may well be willing to hold a foreign security in a securities account for its customer, but the intermediary may have relatively little choice of or control over foreign intermediaries through which the security must in turn be held. Accordingly, it is common for American securities intermediaries to disclaim responsibility for custodial risk of holding through foreign intermediaries.

Subsection (c)(1) provides that a securities intermediary satisfies the duty stated in subsection (a) if the intermediary acts with respect to that duty in accordance with the agreement between the intermediary and the entitlement holder. Subsection (c)(2) provides that if there is no agreement on the matter, the intermediary satisfies the subsection (a) duty if the intermediary

exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset in question. This formulation does not state that the intermediary has a universally applicable statutory duty of due care. Section ~~1-102(3)~~1-302(b) provides that statutory duties of due care cannot be disclaimed by agreement, but the "agreement/due care" formula contemplates that there may be particular circumstances where the parties do not wish to create a specific duty of due care, for example, with respect to foreign securities. Under subsection (c)(1), compliance with the agreement constitutes satisfaction of the subsection (a) duty, whether or not the agreement provides that the intermediary will exercise due care.

In each of the sections where the "agreement/due care" formula is used, it provides that entering into an agreement and performing in accordance with that agreement is a method by which the securities intermediary may satisfy the statutory duty stated in that section. Accordingly, the general obligation of good faith performance of statutory and contract duties, see Sections ~~1-203~~1-304 and 8-102(a)(10), would apply to such an agreement. It would not be consistent with the obligation of good faith performance for an agreement to purport to establish the usual sort of arrangement between an intermediary and entitlement holder, yet disclaim altogether one of the basic elements that define that relationship. For example, an agreement stating that an intermediary assumes no responsibilities whatsoever for the safekeeping any of the entitlement holder's securities positions would not be consistent with good faith performance of the intermediary's duty to obtain and maintain financial assets corresponding to the entitlement holder's security entitlements.

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Clearing corporation" | Section 8-102(a)(5) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-505. Duty of Securities Intermediary with Respect to Payments and Distributions**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-506. Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-507. Duty of Securities Intermediary to Comply with Entitlement Order**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Appropriate person" | Section 8-107 |
| "Effective" | Section 8-107 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Entitlement order" | Section 8-102(a)(8) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-508. Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Form of Security Holding**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |

**Section 8-509. Specification of Duties of Securities Intermediary by Other Statute or Regulation; Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Agreement" | Section ~~1-201(3)~~1-201(b)(3) |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security agreement" | Section 9-102(a)(73) |
| "Security interest" | Section ~~1-201(37)~~1-201(b)(35) |

**Section 8-510. Rights of Purchaser of Security Entitlement from Entitlement Holder**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Adverse claim" | Section 8-102(a)(1) |
| "Control" | Section 8-106 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Notice of adverse claim" | Section 8-105 |
| "Purchase" | Section ~~1-201(32)~~1-201(b)(29) |
| "Purchaser" | Sections ~~1-201(33)~~1-201(b)(30) & 8-116 |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

**Section 8-511. Priority among Security Interests and Entitlement Holders**

* * *

**Official Comment**

* * *

**Definitional Cross References:**

| | |
|---|---|
| "Clearing corporation" | Section 8-102(a)(5) |
| "Control" | Section 8-106 |
| "Entitlement holder" | Section 8-102(a)(7) |
| "Financial asset" | Section 8-102(a)(9) |
| "Securities intermediary" | Section 8-102(a)(14) |
| "Security entitlement" | Section 8-102(a)(17) |
| "Security interest" | Section ~~1-201(37)~~1-201(b)(35) |
| "Value" | Sections ~~1-201(44)~~1-204 & 8-116 |

## PART 6

## TRANSITION PROVISIONS FOR REVISED ARTICLE 8 ~~AND CONFORMING AMENDMENTS TO ARTICLES 1, 3, 4, 5, 9, AND 10~~

**Section 8-601. Effective Date**

* * *

**Section 8-602. Repeals**

* * *

**Official Comment**

* * *

**Section 8-603. Savings Clause**

* * *

**Official Comment**

* * *

## ~~APPENDIX I [OMITTED]~~

# UNIFORM COMMERCIAL CODE

# ARTICLE 9 – SECURED TRANSACTIONS

Drafted by the

---

**NATIONAL CONFERENCE OF COMMISSIONERS**

**ON UNIFORM STATE LAWS**

**THE AMERICAN LAW INSTITUTE**

---

As adopted in 1999 and revised in: (i) 1999 and 2000, to correct errata; (ii) 2003, in connection with the revision of Article 7; (iii) 2005, to make minor amendments; (iv) 2006, to correct errata; (v) 2010, to make amendments; (vi) 2012, in connection with PEB Commentary No. 17; (v) 2018, to make amendments; (vi) 2017, in connection with PEB Commentary No. 19; (vii) 2019, in connection with PEB Commentaries No. 20; (viii) 2020, in connection with PEB Commentary No. 21; (ix) 2021, in connection with PEB Commentary No. 23; (x) 2022, in connection with the 2022 Amendments to the Uniform Commercial Code; (xi) 2022, in connection with PEB Commentaries Nos. 24, 26, and 27; (xii) 2024, in connection with PEB Commentary No. 28; and (xii) 2025, in Connection with PEB Commentaries 29, 30, and 31.

**UNIFORM COMMERCIAL CODE**

**ARTICLE 9 – SECURED TRANSACTIONS**

**PART 1**

**GENERAL PROVISIONS**

**[SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS]**

**Section 9-101. Short Title**

* * *

**Official Comment**

* * *

3. **Summary of 1998 Revisions.** Following is a brief summary of some of the more significant features of the 1998 Revisions of Article 9.

* * *

f. **Proceeds.** Revised Section 9-102 provides an expanded definition of "proceeds" of collateral, which includes additional rights and property that arise out of collateral, such as distributions on account of collateral and claims arising out of the loss or nonconformity of, defects in, or damage to collateral. The revised definition of "proceeds" also includes collections on account of "supporting obligations," such as guarantees.

* * *

j. **Consumer Goods, Consumer-goods Transactions, and Consumer Transactions.** The 1998 Revisions (including the accompanying conforming revisions (see Appendix I)) included several special rules for "consumer goods," "consumer transactions," and "consumer-goods transactions." Each term is defined in Section 9-102.

(i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with enhanced rights to possession of the goods, thereby accelerating and enhancing the opportunity to achieve "buyer in ordinary course of business" status under Section ~~1-201~~1-201(b)(9).

* * *

(ix) Section 9-620 prohibits partial strict foreclosure with respect to consumer goods collateral and, unless the debtor agrees to waive the requirement in a signed record after default, in certain cases requires the secured party to dispose of consumer goods collateral ~~which~~ that has

been repossessed.

* * *

4. **Summary of 2022 Article 9 Revisions.** Following is a brief summary of some of the more significant revisions that are included in the 2022 Article 9 Revisions. The 2022 amendments to Article 9 are extensive. Many of the amendments are necessary to conform Article 9 to new Article 12, which (along with its Comments) should be read along with the Article 9 amendments and Comments. Other material amendments include those relating to chattel paper and money, among other matters.

* * *

b. **Chattel Paper-Related Amendments**. These amendments primarily address two issues that have arisen under the pre-2022 Article 9 with respect to transactions in chattel paper.

First, the definition of "chattel paper" created uncertainty in "bundled" or "hybrid" transactions in which monetary obligations exist not only under a lease of goods but also with respect to other property and services relating to the leased goods. Frequently, the value of the non-goods aspect of a transaction is substantially greater than the value of the lessee's rights under the lease of goods. Uncertainty existed among those who finance chattel paper and other rights to payment as to whether these transactions give rise to chattel paper. The revisions resolve this issue by treating only those transactions whose predominant purpose was to give the obligor (lessee) the right to possession and use of the goods as giving rise to "chattel paper." Some similar issues arise in connection with chattel paper that includes a security interest ~~securing~~ in specific goods. See Section 9-102, Comment 5.b.

* * *

**Section 9-102. Definitions and Index of Definitions**

* * *

**Official Comment**

* * *

2. **Parties to Secured Transactions.**

* * *

b.1. **"Assignee"; "Assignor."** Instead of referring to a "debtor," "secured party," and "security interest," all of which are defined terms, several provisions of Article 9, including Part 4, refer to the "assignment" or the "transfer" of property interests and some refer to an "assignor," "assignee," or "assigned contract." None of those terms are defined in the UCC. Some courts have read the undefined terms in an unduly narrow way. In 2020, the Permanent

Editorial Board for the UCC issued a Commentary clarifying the meanings of these terms and amended the official comments accordingly. PEB Commentary No. 21. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see Section 9-107, Comment 4), no significance should be placed on the use of one term or the other. Depending on the substance of the transaction, each term as used in this Article refers to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest, or both.

The 2022 Article 9 Revisions added new definitions of "assignee" and "assignor." Paragraph 7A defines "assignee" as a person in whose favor a security interest securing an obligation is created or to which an account, chattel paper, a payment intangible, or a promissory note has been sold. Paragraph 7B defines "assignor" as a person creating a security interest securing an obligation or that sells an account, chattel paper, a payment intangible, or a promissory note. These definitions incorporate the essence of the 2020 PEB Commentary into the statutory text. The definitions also specify that an "assignor" includes a secured party that transfers a security interest to another person and an "assignee" includes a person to which a security interest has been transferred by a secured party. By their terms, the defined terms "assignee" and "assignor" contemplate assignments in particular contexts. However, several references in this article to "assigned," "assignment" and "assignee" include transfers in broader contexts than those addressed in the defined terms. See, e.g., subsection (a)(2) ("assigned," in definition of "account") and (a)(47) ("assignment," in definition of "instrument") and Sections 9-109, 9-408, 9-409, and 9-519.

* * *

3. **Definitions Relating to Creation of a Security Interest.**

* * *

b. **"Security Agreement."** The definition of "security agreement" is substantially the same as under pre-1998 Section 9-105 – an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in pre-1998 Article 9 to refer to the document or writing that contained a debtor's security agreement. The 1998 Article 9 eliminated that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law *characterize* the transaction as a security interest but rather on whether the transaction falls within the definition of "security interest" in Section ~~1-201~~1-201(b)(35). Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction. See Section 1-203.

4. **Goods-Related Definitions.**

* * *

5. **Receivables-related Definitions.**

* * *

h. **"Account Debtor."** An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of this change from the definition in pre-1998 Article 9 is that the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to a negotiable instrument that is a "promissory note," as that term is used in the 2022 revision of subsection (d). See Comment 5.c.) Rather, the rights of an assignee of a negotiable instrument are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

The definition of "account debtor" was revised in 2022 to add the modifier "negotiable" to the second reference to "instrument," making it clear that an obligor on a negotiable instrument is not an account debtor. This amendment (which is intended to clarify and not to change the meaning of the definition) is useful because the definition of "instrument" has been revised to exclude writings that evidence chattel paper. However, the definition of "negotiable instrument" in Section ~~1-201~~3-104 continues to apply under Article 9. See Section 9-102(a)(47) and (b); Comment 5.c. Of course, a record or records evidencing chattel paper must evidence either a security agreement or lease agreement in addition to a right to payment of a monetary obligation.

* * *

9. **Definitions Relating to Medium Neutrality.**

* * *

b. **"Sign"; "Communicate"; "Send."** The defined term "authenticate" and "authenticated" has been deleted in the 2022 Article 9 Revisions. That term and "authenticated" were generally used in Article 9 instead of "sign" and "signed." However, the 2022 revised definition of "sign" in Section ~~1-201~~1-201(b)(37) encompasses authentication of all records, not just writings. Accordingly, "sign" and "signed" are now used in Article 9. (References to signing of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms "communicate" and "send" also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The 2022 Amendments deleted the

definition of "send" in this section and ~~added a~~ modified the corresponding definition ~~to~~ in Section ~~1-201~~1-201(b)(36), replacing the pre-2022 definition in that section.

* * *

11. **Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; "Public Organic Record;" "Registered Organization"; "State."** These definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1 of the 1998 Revisions.

* * *

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a "registered organization." Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform Statutory Trust Entity Act § 201 (2009); Delaware Statutory Trust Act, Del. Code Ann. tit. 12, § 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a "legal or commercial entity," it qualifies as a "person other than an individual," and therefore as an "organization," under Section ~~1-201~~1-201(b)(25). A statutory trust that is formed by the filing of a record in a public office is a "registered organization," and the filed record is a "public organic record" of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be "available to the public for inspection" is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust – whether its purpose is donative or commercial – arises from private action without the filing of a record in a public office. See Uniform Trust Code § 401 (2000); Restatement (Third) of Trusts § 10 (2003). Moreover, under traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a "business trust," i.e., that has a business or commercial purpose, is an "organization" under Section ~~1-201~~1-201(b)(25). However, such a trust would not be a "registered organization" if, as is typically the case, the filing of a public record is not needed to form it.

* * *

12A. **Money-Related Definitions and Terms: "Money"; "Electronic Money"; "Tangible Money"; "Funds"; "Monetary Obligation."** The Article 9 definition of "money" in subsection (a)(54A), added by the 2022 Article 9 Revisions, is a subset of the definition of "money" as defined in Section 1-201(b)(24). It follows that cryptocurrencies, such as bitcoin, that are not "money" as defined in Section ~~1-201~~1-201(b)(24) because they were in existence and used before adoption by a government, also are not Article 9 money. An obligation to pay in such cryptocurrencies would not be an account, chattel paper, or a payment intangible or an

obligation on an instrument because the obligation would not be a "monetary obligation" or an obligation to pay money. One purpose of the Article 9 definition is to ensure that even if some deposit accounts were to become "money" as defined in Article 1, the provisions relating to perfection and priority for security interests in deposit accounts, and not those for money, will apply to that collateral. Some countries may authorize or adopt deposit accounts with a central bank as a form of "money." See Section 9-101, Comment 4.c. However, the Article 9 provisions governing "deposit accounts" would remain suitable for such accounts with a central bank, even if a government has adopted these accounts as money. The 2022 Article 9 Revisions leave Article 9's treatment of deposit accounts largely unchanged. However, for purposes of Article 9 and in the interest of clarity, the definition of "money" in Section 9-102(a)(31A) excludes deposit accounts. Under this definition, deposit accounts would not be money for Article 9 purposes even if they were to become money under the Article 1 definition. Another purpose of the Article 9 definition of "money" is to exclude from that definition money (as defined in Section 1-201(b)(24)) in an electronic form that cannot be subjected to control under Section 9-105A. Such property would be a general intangible, governed by the perfection and priority rules for that type of collateral.

* * *

"Monetary obligation" as used in the Uniform Commercial Code (including in Article 9) is not a defined term. The term contemplates an obligation to pay "money" as defined in Section 1-201(b)(24). Consequently, for example, a right to payment of money in an electronic form that cannot be subjected to control, excluded from the Article 9 definition of "money" in subsection (a)(54A), would be a monetary obligation. It follows that such a right to payment could be an account, chattel paper, a payment intangible, or an instrument – including a negotiable instrument, which is defined to include a promise to pay "money" as the term is defined in Section ~~1-201~~1-201(b)(24). See Section 3-104(a) (defining "negotiable instrument"). Also, the term "funds" (like "monetary obligation," an undefined term), as used in the Uniform Commercial Code includes a right to payment of money as defined in Section 1-201(b)(24). As mentioned above, because cryptocurrencies such as bitcoin are not "money" as defined in Section ~~1-201~~1-201(b)(24) (unless they were not in existence and used before adoption by a government), a cryptocurrency or an obligation to pay in cryptocurrency would not be a "monetary obligation" or "funds."

* * *

15. **"Accounting."** This definition describes the record and information that a debtor is entitled to request under Section 9-210. Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this definition.

* * *

23. **"Proposal."** This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622. Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the 2022 revision

of the definition adopts the cognate term "signed" to replace the term "authenticated" used in the pre-2022 text.

* * *

**Section 9-103. Purchase-Money Security Interest; Application of Payments; Burden of Establishing**

* * *

**Official Comment**

* * *

7. **Provisions Applicable Only to Non-~~Consumer~~consumer-goods Transactions.**

* * *

**Section 9-104. Control of Deposit Account**

* * *

**Official Comment**

* * *

2. **Why "Control" Matters.** This section explains the concept of "control" of a deposit account. "Control" under this section may serve two functions. First, "control . . . pursuant to the debtor's security agreement" may substitute for a signed security agreement as an element of attachment. See Section 9-203(b)(3)(D). Second, when a deposit account is taken as original collateral, the only method of perfection is obtaining control under this section. See Section 9-312(b)(1).

* * *

As is the case with possession under Section 9-313, in determining whether a particular person has control under subsection (a), the principles of agency apply. See Section ~~1-103~~1-103(b) and Restatement (3d), Agency § 8.12, Comment *b*.

* * *

**Section 9-105. Control of Electronic Copy of Record Evidencing Chattel Paper**

* * *

**Official Comment**

* * *

**Section 9-105A. Control of Electronic Money**

* * *

**Official Comment**

* * *

**Section 9-106. Control of Investment Property**

* * *

**Official Comment**

* * *

**Section 9-107. Control Of Letter-of-Credit Right**

* * *

**Official Comment**

* * *

**Section 9-107A. Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.**

* * *

**Official Comment**

* * *

**Section 9-107B. No Requirement to Acknowledge or Confirm; No Duties**

* * *

**Official Comment**

* * *

**Section 9-108. Sufficiency of Description**

* * *

**Official Comment**

* * *

2. **General Rules.** Subsection (a) retains substantially the same formulation as former Section 9-110. Subsection (b) expands upon subsection (a) by indicating a variety of ways in which a description might reasonably identify collateral. Whereas a provision similar to subsection (b) was applicable only to investment property under former Section 9-115(3), subsection (b) applies to all types of collateral, subject to the limitation in subsection (d). Subsection (b) is subject to subsection (c), which follows prevailing case law and adopts the view that an "all assets" or "all personal property" description for purposes of a *security agreement* is *not* sufficient. Note, however, that under Section 9-504, a *financing statement* sufficiently indicates the collateral if it "covers all assets or all personal property."

The purpose of requiring a description of collateral in a security agreement under Section 9-203 is evidentiary. The test of sufficiency of a description under this section, as under former Section 9-110, is that the description ~~do~~ does the job assigned to it: make possible the identification of the collateral described. This section rejects any requirement that a description is insufficient unless it is exact and detailed (the so-called "serial number" test).

* * *

**[SUBPART 2. APPLICABILITY OF ARTICLE]**

**Section 9-109. Scope**

* * *

**Official Comment**

* * *

2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended. Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a "security interest," the definition of that term in Section ~~1-201~~1-201(b)(35) must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to whether this Article applies, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

* * *

5. **Transfer of Ownership in Sales of Receivables.** A "sale" of an account, chattel paper, a promissory note, or a payment intangible includes a sale of a right in the receivable, such as a sale of a participation interest. The term also includes the sale of an enforcement right. For example, a "[p]erson entitled to enforce" a negotiable promissory note (Section 3-301) may sell its ownership rights in the instrument. See Section 3-203, Comment 1 ("Ownership rights in instruments may be determined by principles of the law of property, independent of Article 3, which do not depend upon whether the instrument was transferred under Section 3-203."). Also, the right under Section 3-309 to enforce a lost, destroyed, or stolen negotiable promissory note may be sold to a purchaser who could enforce that right by causing the seller to provide the proof required under that section. This Article rejects decisions reaching a contrary result, e.g., *Dennis Joslin Co. v. Robinson Broadcasting*, 977 F. Supp. 491 (D.D.C. 1997).

Nothing in this section or any other provision of Article 9 prevents the transfer of full and complete ownership of an account, chattel paper, an instrument, or a payment intangible in a transaction of sale. However, as mentioned in Comment 4, neither this Article nor the definition of "security interest" in Section ~~1-201~~1-201(b)(35) provides rules for distinguishing sales transactions from those that create a security interest securing an obligation. This Article applies to both types of transactions. The principal effect of this coverage is to apply this Article's perfection and priority rules to these sales transactions. Use of terminology such as "security interest," "debtor," and "collateral" is merely a drafting convention adopted to reach this end, and its use has no relevance to distinguishing sales from other transactions. See PEB Commentary No. 14.

* * *

6. **Consignments.** Subsection (a)(4) was added by the 1998 Revisions. This Article applies to every "consignment." The term, defined in Section 9-102, includes many but not all "true" consignments (i.e., bailments for the purpose of sale). If a transaction is a "sale or return," as defined in revised Section 2-326, it is not a "consignment." In a "sale or return" transaction, the buyer becomes the owner of the goods, and the seller may obtain an enforceable security interest in the goods only by satisfying the requirements of Section 9-203.

Under common law, creditors of a bailee were unable to reach the interest of the bailor (in the case of a consignment, the consignor-owner). Like former Section 2-326 and former Article 9, this Article changes the common-law result; however, it does so in a different manner. For purposes of determining the rights and interests of third-party creditors of, and purchasers of the goods from, the consignee, but not for other purposes, such as remedies of the consignor, the consignee is deemed to acquire under this Article whatever rights and title the consignor had or had power to transfer. See Section 9-319. The interest of a consignor is defined to be a security interest under revised Section ~~1-201(37)~~1-201(b)(35), more specifically, a purchase-money security interest in the consignee's inventory. See Section 9-103(d). Thus, the rules pertaining to lien creditors, buyers, and attachment, perfection, and priority of competing security interests apply to consigned goods. The relationship between the consignor and consignee is left to other law. Consignors also have no duties under Part 6. See Section 9-601(g).

* * *

9. **Governmental Debtors.** Former Section 9-104(e) excluded transfers by governmental debtors. It has been revised and replaced by the exclusions in new paragraphs (2) and (3) of subsection (c). These paragraphs reflect the view that Article 9 should apply to security interests created by a State, foreign country, or a "governmental unit" (defined in Section 9-102) of either except to the extent that another statute governs the issue in question. Under paragraph (2), this Article defers to all statutes of the forum State. (A forum cannot determine whether it should consult the choice-of-law rules in the forum's UCC unless it first determines that its UCC applies to the transaction before it.) Paragraph (3) defers to statutes of another State or a foreign country only to the extent that those statutes contain rules applicable specifically to security interests created by the governmental unit in question.

* * *

**Example 4:** A Belgian governmental unit grants a security interest in its equipment to a Swiss secured party. The equipment is located in Belgium. A dispute arises and, for some reason, an action is brought in a New Mexico state court. Inasmuch as the transaction bears no "appropriate relation" to New Mexico, New Mexico's UCC, including its Article 9, is inapplicable. See Section ~~1-105(1)~~1-301(b). New Mexico's Section 9-109(c) on excluded transactions should not come into play. Even if the parties agreed that New Mexico law would govern, the parties' agreement would not be effective because the transaction does not bear a "reasonable relation" to New Mexico. See Section ~~1-105(1)~~1-301(a).

* * *

16. **Deposit Accounts.** Except in consumer transactions, deposit accounts may be taken as original collateral under this Article. Under former Section 9-104(*l*), deposit accounts were excluded as original collateral, leaving security interests in deposit accounts to be governed by the common law. The common law is nonuniform, often difficult to discover and comprehend, and frequently costly to implement. As a consequence, debtors who wished to use deposit accounts as collateral sometimes were precluded from doing so as a practical matter. By excluding deposit accounts from the Article's scope as original collateral in consumer transactions, subsection (d)(13) leaves those transactions to law other than this Article. However, in both consumer and non-consumer transactions, ~~sections~~ Sections 9-315 and 9-322 apply to deposit accounts as proceeds and with respect to priorities in proceeds.

* * *

**Section 9-110. Security Interests Arising under Article 2 or 2A**

* * *

**Official Comments**

* * *

## PART 2

## EFFECTIVENESS OF SECURITY AGREEMENT;

## ATTACHMENT OF SECURITY INTEREST;

## RIGHTS OF PARTIES TO SECURITY AGREEMENT

## [SUBPART 1. EFFECTIVENESS AND ATTACHMENT]

### Section 9-201. General Effectiveness of Security Agreement

* * *

#### Official Comment

* * *

### Section 9-202. Title to Collateral Immaterial

* * *

#### Official Comment

* * *

### Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites

* * *

#### Official Comment

* * *

3. **Security Agreement; Signed.** Under subsection (b)(3), enforceability requires the debtor's security agreement and compliance with an evidentiary requirement in the nature of a Statute of Frauds. Paragraph (3)(A) represents the most basic of the evidentiary alternatives, under which the debtor must sign a security agreement that provides a description of the collateral. Under Section 9-102, a "security agreement" is "an agreement that creates or provides for a security interest." Neither that definition nor the requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown in fact to have

been given as security. Under this Article, as under prior law, a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security. Similarly, a self-styled "lease" may serve as a security agreement if the agreement creates a security interest. See Section 1-203 (distinguishing security interest from lease). Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate terms "signed" and "signing" replace the references to "authenticated" and "authentication" in the pre-2022 text of this Section.

* * *

**Section 9-204. After-acquired Property; Future Advances**

* * *

**Official Comment**

* * *

**Section 9-205. Use or Disposition of Collateral Permissible**

* * *

**Official Comment**

* * *

3. **Possessory Security Interests.** Subsection (b) makes clear that this section does not relax the requirements for perfection by possession under Section 9-313. If a secured party allows the debtor access to and control over collateral its security interest may be or become unperfected. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

**Section 9-206. Security Interest Arising in Purchase or Delivery of Financial Asset**

* * *

**Official Comment**

* * *

**[SUBPART 2. RIGHTS AND DUTIES]**

**Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral**

* * *

**Official Comment**

* * *

2. **Duty of Care for Collateral in Secured Party's Possession.** Like former section 9-207, subsection (a) imposes a duty of care, similar to that imposed on a pledgee at common law, on a secured party in possession of collateral. See Restatement, Security §§ 17, 18. In many cases a secured party in possession of collateral may satisfy this duty by notifying the debtor of action that should be taken and allowing the debtor to take the action itself. If the secured party itself takes action, its reasonable expenses may be added to the secured obligation. The revised definitions of "collateral," "debtor," and "secured party" in Section 9-102 make this section applicable to collateral subject to an agricultural lien if the collateral is in the lienholder's possession. Under Section ~~1-302~~1-302(b) the duty to exercise reasonable care may not be disclaimed by agreement, although under that section the parties remain free to determine by agreement standards that are not manifestly unreasonable as to what constitutes reasonable care. Unless otherwise agreed, for a secured party in possession of chattel paper or an instrument, reasonable care includes the preservation of rights against prior parties. The secured party's right to have instruments or documents indorsed or transferred to it or its order is dealt with in the relevant sections of Articles 3, 7, and 8. See Sections 3-203(c), 7-506, 8-304(d).

* * *

5. **"Repledges" and Right of Redemption.** Subsection (c)(3) eliminates the qualification in former Section 9-207 to the effect that the terms of a "repledge" may not "impair" a debtor's "right to redeem" collateral. The change is primarily for clarification. There is no basis on which to draw from subsection (c)(3) any inference concerning the debtor's right to redeem the collateral. The debtor enjoys that right under Section 9-623; this section need not address it. For example, if the collateral is a negotiable note that the secured party (SP-1) repledges to SP-2, nothing in this section suggests that the debtor (D) does not retain the right to redeem the note upon payment to SP-1 of all obligations secured by the note. But, as explained below, the debtor's unimpaired right to redeem as against the debtor's original secured party nevertheless may not be enforceable as against the new secured party.

* * *

Whether SP-2 would be liable to D depends on the relative priority of SP-2's security interest and D's interest. By permitting SP-1 to create a security interest in the collateral (repledge), subsection (c)(3) provides a statutory power for SP-1 to give SP-2 a security interest (subject, of course, to any agreement by SP-1 not to give a security interest). In the vast majority of cases where repledge rights are significant, the security interest of the second secured party, SP-2 in the example, will be senior to the debtor's interest. By virtue of the debtor's consent or applicable legal rules, SP-2 typically would cut off D's rights in investment property or be immune from D's claims. See Sections 9-331, 3-306 (holder in due course), 8-303 (protected purchaser), 8-502 (acquisition of a security entitlement), 8-503(e) (action by entitlement holder),

12-104 (qualifying purchaser). Moreover, the expectations and business practices in some markets, such as the securities markets, are such that D's consent to SP-2's taking free of D's rights inheres in D's creation of SP-1's security interest which gives rise to SP-1's power under this section. In these situations, D would have no right to recover the collateral or recover damages from SP-2. Nevertheless, D would have a damage claim against SP-1 if SP-1 had given a security interest to SP-2 in breach of its agreement with D. Moreover, if SP-2's security interest secures an amount that is less than the amount secured by SP-1's security interest (granted by D), then D's exercise of its right to redeem would provide value sufficient to discharge SP-1's obligations to SP-2.

* * *

**Section 9-208. Additional Duties of Secured Party Having Control of Collateral**

* * *

**Official Comment**

1. **Source.** New.

2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account, an electronic copy of a record evidencing chattel paper, investment property, a letter-of-credit right, an electronic document of title, electronic money, or a controllable electronic record. The duty to terminate the secured party's control is analogous to the duty to file a termination statement, imposed by Section 9-513. Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement under Section ~~1-102(3)~~1-302(a). For example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to the debtor or put them in an account in the debtor's name.

* * *

5. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces references to "authenticated" in the pre-2022 text of this section.

**Section 9-209. Duties of Secured Party If Account Debtor Has Been Notified of Assignment**

* * *

**Official Comment**

* * *

3. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces references to "authenticated" in the pre-2022 text of this section.

**Section 9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account**

* * *

**Official Comment**

* * *

8. **"Signed" and "Signing" Replaces "Authenticated" and "Authenticating."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate terms "signed" and "signing" replace references to "authenticated" and "authenticating" in the pre-2022 text of this section.

**PART 3**

**PERFECTION AND PRIORITY**

**[SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY]**

**Section 9-301. Law Governing Perfection and Priority of Security Interests**

* * *

**Official Comment**

* * *

2. **Scope of This Subpart.** Part 3, Subpart 1 (Sections 9-301 through 9-307) contains choice-of-law rules similar to those of former Section 9-103. Former Section 9-103 generally addresses which State's law governs "perfection and the effect of perfection or non-perfection of" security interests. See, e.g., former Section 9-103(1)(b). This Article follows the broader and more precise formulation in former Section 9-103(6)(b), which was revised in connection with the promulgation of Revised Article 8 in 1994: "perfection, the effect of perfection or non-perfection, and the priority of" security interests. Priority, in this context, subsumes all of the rules in Part 3, including "cut off" or "take free" rules such as Sections 9-317(b), (c), and (d), 9-320(a), (b), and (d), and 9-332. ~~(~~The Hague Securities Convention may sometimes modify

certain of this subpart's choice-of-law rules, as well as applying them to the requirements for foreclosure and the like, the characterization of a transfer as being outright or by way of security as it affects rights of third parties, and certain other issues. See PEB Commentary No. 19, dated April 11, 2017. The Commentary is available at https://www.ali.org/peb-ucc.

This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization of a transaction (e.g., true lease or security interest) as it affects rights between the parties to the transaction, and enforcement is governed by the rules in Section 1-301(a) and (b); that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction's law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3. As to the law applicable to characterization, see PEB Commentary No. 24, dated August 12, 2022. The Commentary is available at https://www.ali.org/peb-ucc.

* * *

7. **Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable Documents, and Tangible Chattel Paper.** Under former Section 9-103, the law of a single jurisdiction governed both questions of perfection and those of priority. This Article generally adopts that approach. See paragraph (1). But the approach may create problems if the debtor and collateral are located in different jurisdictions. For example, assume a security interest in equipment located in Pennsylvania is perfected by filing in Illinois, where the debtor is located. If the law of the jurisdiction in which the debtor is located were to govern priority, then the priority of an execution lien on goods located in Pennsylvania would be governed by rules enacted by the Illinois legislature.

* * *

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, ~~tangible~~ negotiable tangible documents, and tangible chattel paper. Compare former Section 9-103(1), which applied the law of the location of the collateral to documents, instruments, and "ordinary" (as opposed to "mobile") goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

* * *

8. **Non-U.S. Debtors.** This Article applies the same choice-of-law rules to all debtors, foreign and domestic. For example, it adopts the bifurcated approach for determining the law applicable to security interests in goods and other tangible collateral. See Comment 5.a., above. The Article contains a new rule specifying the location of non-U.S. debtors for purposes of this Part. The rule appears in Section 9-307 and is explained in the Comments to that section. ~~Former~~ Pre-1998 Section 9-103(3)(c), which contained a special choice-of-law rule governing security interests created by debtors located in a non-U.S. jurisdiction, proved unsatisfactory and was deleted. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

**Section 9-302. Law Governing Perfection and Priority of Agricultural Liens**

* * *

**Official Comment**

* * *

**Section 9-303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title**

* * *

**Official Comment**

* * *

**Section 9-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts**

* * *

**Official Comment**

* * *

**Section 9-305. Law Governing Perfection and Priority of Security Interests in Investment Property**

* * *

**Official Comment**

* * *

**Section 9-306. Law Governing Perfection and Priority of Security Interests in Letter-Of-Credit Rights**

* * *

**Official Comment**

* * *

**Section 9-306A. Law Governing Perfection and Priority of Security Interests in Chattel Paper**

* * *

**Official Comment**

* * *

**Section 9-306B. Law Governing Perfection and Priority of Security Interests in Controllable Accounts, Controllable Electronic Records, and Controllable Payment Intangibles**

* * *

**Official Comment**

* * *

**Section 9-307. Location of Debtor**

* * *

**Official Comment**

* * *

In cases not governed by subsection (f) or (i), the location of a foreign bank is determined by subsections (b) and (c). ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

~~Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).~~

* * *

**[SUBPART 2. PERFECTION]**

**Section 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection**

* * *

**Official Comment**

* * *

4. **Continuous Perfection.** The following example illustrates the operation of subsection (c):

**Example 1:** Debtor, an importer, creates a security interest in goods that it imports and the documents of title that cover the goods. The secured party, Bank, takes possession of a ~~tangible~~ negotiable tangible bill of lading covering certain imported goods and thereby perfects its security interest in the bill of lading and the goods. See Sections 9-313(a), 9-312(c)(1). Bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and selling them. Under Section 9-312(f), Bank continues to have a perfected security interest in the document and goods for 20 days. Bank files a financing statement covering the collateral before the expiration of the 20-day period. Its security interest now continues perfected for as long as the filing is good.

* * *

**Section 9-309. Security Interest Perfected upon Attachment**

* * *

**Official Comment**

* * *

Paragraph (14), which is new, affords automatic perfection to sales by individuals of an "account" (as defined in Section 9-102) consisting of the right to winnings in a lottery or other game of chance. Payments on these accounts typically extend for periods of twenty years or more. It would be unduly burdensome for the secured party, who would have no other reason to maintain contact with the seller, to monitor the seller's whereabouts for such a length of time. This paragraph was added in 2001. It applies to a sale of an account described in it, even if the sales was entered into before the effective date of the paragraph. However, if the relative priorities of conflicting claims to the account were established before the paragraph took effect, Article 9 as in effect immediately prior to the date the paragraph took effect determines priority. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

**Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply**

* * *

**Official Comment**

* * *

**Section 9-311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties**

* * *

**Official Comment**

* * *

An example of the type of federal statute referred to in subsection (a)(1) is 49 U.S.C. §§ 44107~~-11~~ 44111, for civil aircraft of the United States. The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds but does not establish a national filing system and therefore is not within the scope of subsection (a)(1). An assignee of a claim against the United States may benefit from compliance with the Assignment of Claims Act. But regardless of whether the assignee complies with that Act, the assignee must file under this Article in order to perfect its security interest against creditors and transferees of its assignor.

* * *

**Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-Of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession**

* * *

**Official Comment**

* * *

Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section ~~1-201~~1-201(b)(15) (definition of "delivery"). The secured party's taking possession of a tangible document or control of an electronic document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel paper, a security interest in a negotiable document may be perfected by filing.

* * *

10. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest without Filing**

* * *

**Official Comment**

* * *

Subsection (e), which is new, applies to a secured party in possession of security certificates or another person who has taken delivery of security certificates and holds them for the secured party's benefit under Section 8-301. See Comment 8. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

10. **"Signs" and "Signed" Replaces "Authenticates" and "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate terms "signs" and "signed" replace the references to "authenticates" and "authenticated" in the pre-2022 text of this section.

**Section 9-314. Perfection by Control**

* * *

**Official Comment**

* * *

**Section 9-314A. Perfection by Possession and Control of Chattel Paper**

* * *

**Official Comment**

* * *

**Section 9-315. Secured Party's Rights on Disposition of Collateral and in Proceeds**

* * *

**Official Comment**

* * *

**Section 9-316. Effect of Change in Governing Law**

* * *

**Official Comment**

* * *

**[SUBPART 3. PRIORITY]**

**Section 9-317. Interests That Take Priority over or Take Free of Security Interest or Agricultural Lien**

* * *

**Official Comment**

* * *

3. **Competing Security Interests.** Section 9-322 states general rules for determining priority among conflicting security interests and refers to other sections that state special rules of priority in a variety of situations. The security interests given priority under Section 9-322 and the other sections to which it refers take priority in general even over a perfected security interest. *A fortiori* they take priority over an unperfected security interest. ~~*Amendments in italics approved by the Permanent Editorial Board for Uniform Commercial Code October 20, 1999.*~~

* * *

**Section 9-318. No Interest Retained in Right to Payment That Is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers**

* * *

**Official Comment**

* * *

2. **Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes.** Section 1-201(b)(35) defines "security interest" to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of "security interest" in Section ~~1-201~~1-201(b)(35) provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

* * *

**Section 9-319. Rights and Title of Consignee with Respect to Creditors and Purchasers**

* * *

**Official Comment**

* * *

**Section 9-320. Buyer of Goods**

* * *

**Official Comment**

* * *

3. **Buyers in Ordinary Course.** Subsection (a) derives from former Section 9-307(1). The definition of "buyer in ordinary course of business" in Section ~~1-201~~1-201(b)(9) restricts its application to buyers "from a person, other than a pawnbroker, in the business of selling goods of that kind." Thus subsection (a) applies primarily to inventory collateral. The subsection further excludes from its operation buyers of "farm products"(defined in Section 9-102) from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys goods "in good faith, without knowledge that the sale violates the rights of another person and in the ordinary course." Subsection (a) provides that such a buyer takes free of a security

interest, even though perfected, and even though the buyer knows the security interest exists. Reading the definition together with the rule of law results in the buyer's taking free if the buyer merely knows that a security interest covers the goods but taking subject if the buyer knows, in addition, that the sale violates a term in an agreement with the secured party.

* * *

As to ~~purchase money security~~ purchase-money security interests which are perfected without filing under Section 9-309(1): A secured party may file a financing statement, although filing is not required for perfection. If the secured party does file, all buyers take subject to the security interest. If the secured party does not file, a buyer who meets the qualifications stated in the preceding paragraph takes free of the security interest.

* * *

6. **Authorized Dispositions.** The limitations that subsections (a) and (b) impose on the persons who may take free of a security interest apply of course only to unauthorized sales by the debtor. If the secured party authorized the sale in an express agreement or otherwise, the buyer takes free under Section 9-315(a) without regard to the limitations of this section. (That section also states the right of a secured party to the proceeds of a sale, authorized or unauthorized.) Moreover, the buyer also takes free if the secured party waived or otherwise is precluded from asserting its security interest against the buyer. See Section ~~1-103~~1-103(b).

* * *

**Section 9-321. Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business**

* * *

**Official Comment**

* * *

**Section 9-322. Priorities among Conflicting Security Interests in and Agricultural Liens on Same Collateral**

* * *

**Official Comment**

* * *

4. **Competing Perfected Security Interests.** When there is more than one perfected

security interest, the security interests rank according to priority in time of filing or perfection. "Filing," of course, refers to the filing of an effective financing statement. "Perfection" refers to the acquisition of a perfected security interest, i.e., one that has attached and as to which any required perfection step has been taken. See Sections 9-308 and 9-309.

* * *

**Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a ~~tangible~~ negotiable tangible document in the debtor's possession under Section 9-312(e). On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 10, A files. A has priority, even after the 20-day period expires, regardless of whether A knows of B's security interest when A files. A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A's security interest extends only "to the extent it arises for new value given." To the extent A's security interest secures advances made by A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch as B was the first to file.

* * *

**Section 9-323. Future Advances**

* * *

**Official Comment**

* * *

3. **Competing Security Interests.** Under a proper reading of the first-to-file-or-perfect rule of Section 9-322(a)(1) (and former Section 9-312(5)), it is abundantly clear that the time when an advance is made plays no role in determining priorities among conflicting security interests except when a financing statement was not filed and the advance is the giving of value as the last step for attachment and perfection. Thus, a secured party takes subject to all advances secured by a competing security interest having priority under Section 9-322(a)(1). This result generally obtains regardless of how the competing security interest is perfected and regardless of whether the advances are made "pursuant to commitment" (Section 9-102). Subsection (a) of this section states the only other instance when the time of an advance figures in the priority scheme in Section 9-322: when the security interest is perfected only automatically under Section 9-309 or temporarily under Section 9-312(e), (f), or (g), and the advance is not made pursuant to a commitment entered into while the security interest was perfected by another method. Thus, an advance has priority from the date it is made only in the rare case in which it is made without commitment and while the security interest is perfected only temporarily under Section 9-312.

* * *

**Example 2:** On October 1, A acquires a temporarily perfected (20-day) security interest,

unfiled, in a ~~tangible~~ negotiable tangible document in the debtor's possession under Section 9-312(e) or (f). The security interest secures an advance made on that day as well as future advances. On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 8, A makes an additional advance. On October 10, A files. Under Section 9-322(a)(1), because A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period, A has priority, even after the 20-day period expires. See Section 9-322, Comment 4, Example 3. However, under this section, for purposes of Section 9-322(a)(1), to the extent A's security interest secures the October 8 advance, the security interest was perfected on October 8. Inasmuch as B perfected on October 5, B has priority over the October 8 advance.

* * *

4. **Competing Lien Creditors.** Subsection (b) replaces former Section 9-301(4) and addresses the rights of a "lien creditor," as defined in Section 9-102. Under Section 9-317(a)(2), a security interest is senior to the rights of a person who becomes a lien creditor, unless the person becomes a lien creditor before the security interest is perfected and before a financing statement covering the collateral is filed and Section 9-203(b)(3) is satisfied. Subsection (b) of this section provides that a security interest is subordinate to those rights to the extent that the specified circumstances occur. Subsection (b) does not elevate the priority of a security interest that is subordinate to the rights of a lien creditor under Section 9-317(a)(2); it only subordinates.

As under former Section 9-301(4), a secured party's knowledge does not cut short the 45-day period during which future advances can achieve priority over an intervening lien creditor's interest. Rather, because of the impact of the rule in subsection (b) on the question whether the security interest for future advances is "protected" under Section 6323(c)(2) and (d) of the Internal Revenue Code as amended by the Federal Tax Lien Act of 1966, the priority of the security interest for future advances over a lien creditor is made absolute for 45 days regardless of knowledge of the secured party concerning the lien. If, however, the advance is made after the 45 days, the advance will not have priority unless it was made or committed without knowledge of the lien. ~~*Amendments in italics approved by the Permanent Editorial Board for Uniform Commercial Code October 20, 1999 and January 15, 2000.~~

* * *

**Section 9-324. Priority of Purchase-Money Security Interests**

* * *

**Official Comment**

1. **Source.** Former Section 9-312(3), (4).

2. **Priority of Purchase-Money Security Interests.** This section contains the priority rules applicable to purchase-money security interests, as defined in Section 9-103. It affords a

special, non-temporal priority to those purchase-money security interests that satisfy the statutory conditions. In most cases, priority will be over a security interest asserted under an after-acquired property clause. See Section 9-204 on the extent to which security interests in after-acquired property are validated.

A purchase-money security interest can be created only in goods and software. See Section 9-103. Section 9-324(a), which follows former Section 9-312(4), contains the general rule for purchase-money security interests in goods. It is subject to subsections (b) and (c), which derive from former Section 9-312(3) and apply to purchase-money security interests in inventory, and subsections (d) and (e), which apply to purchase-money security interests in livestock that are farm products. Subsection (f) applies to purchase-money security interests in software. Subsection (g) deals with the relatively unusual case in which a debtor creates two purchase-money security interests in the same collateral and both security interests qualify for special priority under one of the other subsections.

Former Section 9-312(2) contained a rule affording special priority to those who provided secured credit that enabled a debtor to produce crops. This rule proved unworkable and has been eliminated from this Article. Instead, model Section 9-324A contains a revised production-money priority rule. That section is a model, not uniform, provision. The sponsors of the UCC have taken no position as to whether it should be enacted, instead leaving the matter for state legislatures to consider if they are so inclined.

3. **Purchase-Money Priority in Goods Other Than Inventory and Livestock.** Subsection (a) states a general rule applicable to all types of goods except inventory and farm-products livestock: the purchase-money interest takes priority if it is perfected when the debtor receives possession of the collateral or within 20 days thereafter. (As to the 20-day "grace period," compare Section 9-317(e). Former Sections 9-312(4) and 9-301(2) contained a 10-day grace period.) The perfection requirement means that the purchase-money secured party either has filed a financing statement before that time or has a temporarily perfected security interest in goods covered by documents under Section 9-312(e) and (f) which is continued in a perfected status by filing before the expiration of the 20-day period specified in that section. A purchase-money security interest qualifies for priority under subsection (a), even if the purchase-money secured party knows that a conflicting security interest has been created and/or that the holder of the conflicting interest has filed a financing statement covering the collateral.

Normally, there will be no question when "the debtor receives possession of the collateral" for purposes of subsection (a). However, sometimes a debtor buys goods and takes possession of them in stages, and then assembly and testing are completed (by the seller or debtor-buyer) at the debtor's location. Under those circumstances, the buyer "takes possession" within the meaning of subsection (a) when, after an inspection of the portion of the goods in the debtor's possession, it would be apparent to a potential lender to the debtor that the debtor has acquired an interest in the goods taken as a whole.

A similar issue concerning the time when "the debtor receives possession" arises when a person acquires possession of goods under a transaction that is not governed by this Article and then later agrees to buy the goods on secured credit. For example, a person may take possession

of goods as lessee under a lease contract and then exercise an option to purchase the goods from the lessor on secured credit. Under Section 2A-307(1), creditors of the lessee generally take subject to the lease contract; filing a financing statement against the lessee is unnecessary to protect the lessor's leasehold or residual interest. Once the lease is converted to a security interest, filing a financing statement is necessary to protect the seller's (former lessor's) security interest. Accordingly, the 20-day period in subsection (a) does not commence until the goods become "collateral" (defined in Section 9-102), i.e., until they are subject to a security interest.

4. **Purchase-Money Security Interests in Inventory.** Subsections (b) and (c) afford a means by which a purchase-money security interest in inventory can achieve priority over an earlier-filed security interest in the same collateral. To achieve priority, the purchase-money security interest must be perfected when the debtor receives possession of the inventory. For a discussion of when "the debtor receives possession," see Comment 3, above. The 20-day grace period of subsection (a) does not apply.

The arrangement between an inventory secured party and its debtor typically requires the secured party to make periodic advances against incoming inventory or periodic releases of old inventory as new inventory is received. A fraudulent debtor may apply to the secured party for advances even though it has already given a purchase-money security interest in the inventory to another secured party. For this reason, subsections (b)(2) through (4) and (c) impose a second condition for the purchase-money security interest's achieving priority: the purchase-money secured party must give notification to the holder of a conflicting security interest who filed against the same item or type of inventory before the purchase-money secured party filed or its security interest became perfected temporarily under Section 9-312(e) or (f). The notification requirement protects the non-purchase-money inventory secured party in such a situation: if the inventory secured party has received notification, it presumably will not make an advance; if it has not received notification (or if the other security interest does not qualify as purchase-money), any advance the inventory secured party may make ordinarily will have priority under Section 9-322. Inasmuch as an arrangement for periodic advances against incoming goods is unusual outside the inventory field, subsection (a) does not contain a notification requirement.

5. **Notification to Conflicting Inventory Secured Party: Timing.** Under subsection (b)(3), the perfected purchase-money security interest achieves priority over a conflicting security interest only if the holder of the conflicting security interest receives a notification within five years before the debtor receives possession of the purchase-money collateral. If the debtor never receives possession, the five-year period never begins, and the purchase-money security interest has priority, even if notification is not given. However, where the purchase-money inventory financing began by the purchase-money secured party's possession of a negotiable document of title, to retain priority the secured party must give the notification required by subsection (b) at or before the usual time, i.e., when the debtor gets possession of the inventory, even though the security interest remains perfected for 20 days under Section 9-312(e) or (f).

Some people have mistakenly read former Section 9-312(3)(b) to require, as a condition of purchase-money priority in inventory, that the purchase-money secured party give the

notification before it files a financing statement. Read correctly, the "before" clauses compare (i) the time when the holder of the conflicting security interest filed a financing statement with (ii) the time when the purchase-money security interest becomes perfected by filing or automatically perfected temporarily. Only if (i) occurs before (ii) must notification be given to the holder of the conflicting security interest. Subsection (c) has been rewritten to clarify this point.

6. **Notification to Conflicting Inventory Secured Party: Address.** Inasmuch as the address provided as that of the secured party on a filed financing statement is an "address that is reasonable under the circumstances," the holder of a purchase-money security interest may satisfy the requirement to "send" notification to the holder of a conflicting security interest in inventory by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the holder of the conflicting security interest] as the place for receipt of such communications [i.e., communications relating to security interests]," the holder is deemed to have "received" a notification delivered to that address. See Section 1-202(e).

7. **Consignments.** Subsections (b) and (c) also determine the priority of a consignor's interest in consigned goods as against a security interest in the goods created by the consignee. Inasmuch as a consignment subject to this Article is defined to be a purchase-money security interest, see Section 9-103(d), no inference concerning the nature of the transaction should be drawn from the fact that a consignor uses the term "security interest" in its notice under subsection (b)(4). Similarly, a notice stating that the consignor has delivered or expects to deliver goods, properly described, "on consignment" meets the requirements of subsection (b)(4), even if it does not contain the term "security interest," and even if the transaction subsequently is determined to be a security interest. Cf. Section 9-505 (use of "consignor" and "consignee" in financing statement).

8. **Priority in Proceeds: General.** When the purchase-money secured party has priority over another secured party, the question arises whether this priority extends to the proceeds of the original collateral. Subsections (a), (d), and (f) give an affirmative answer, but only as to proceeds in which the security interest is perfected (see Section 9-315). Although this qualification did not appear in former Section 9-312(4), it was implicit in that provision.

In the case of inventory collateral under subsection (b), where financing frequently is based on the resulting accounts, chattel paper, or other proceeds, the special priority of the purchase-money secured interest carries over into only certain types of proceeds. As under former Section 9-312(3), the purchase-money priority in inventory under subsection (b) carries over into identifiable cash proceeds (defined in Section 9-102) received on or before the delivery of the inventory to a buyer.

As a general matter, also like former Section 9-312(3), the purchase-money priority in inventory does *not* carry over into proceeds consisting of accounts or chattel paper. Many parties financing inventory are quite content to protect their first-priority security interest in the inventory itself. They realize that when the inventory is sold, someone else will be financing the resulting receivables (accounts or chattel paper), and the priority for inventory will not run forward to the receivables constituting the proceeds. Indeed, the cash supplied by the receivables

financer often will be used to pay the inventory financing. In some situations, the party financing the inventory on a purchase-money basis makes contractual arrangements that the proceeds of receivables financing by another be devoted to paying off the inventory security interest.

However, the purchase-money priority in inventory *does* carry over to proceeds consisting of chattel paper and its proceeds (and also to instruments) to the extent provided in Section 9-330. Under Section 9-330(e), the holder of a purchase-money security interest in inventory is deemed to give new value for proceeds consisting of chattel paper. Taken together, Sections 9-324(b) and 9-330(e) enable a purchase-money inventory secured party to obtain priority in chattel paper constituting proceeds of the inventory, even if the secured party does not actually give new value for the chattel paper, provided the purchase-money secured party satisfies the other conditions for achieving priority.

When the proceeds of original collateral (goods or software) consist of a deposit account, Section 9-327 governs priority to the extent it conflicts with the priority rules of this section.

9. **Priority in Accounts Constituting Proceeds of Inventory.** The application of the priority rules in subsection (b) is shown by the following examples:

> **Example 1:** Debtor creates a security interest in its existing and after-acquired inventory in favor of SP-1, who files a financing statement covering inventory. SP-2 subsequently takes a purchase-money security interest in certain inventory and, under subsection (b), achieves priority in this inventory over SP-1. This inventory is then sold, producing accounts. Accounts are not cash proceeds, and so the special purchase-money priority in the inventory does not control the priority in the accounts. Rather, the first-to-file-or-perfect rule of Section 9-322(a)(1) applies. The time of SP-1's filing as to the inventory is also the time of filing as to the accounts under Section 9-322 (b). Assuming that each security interest in the accounts proceeds remains perfected under Section 9-315, SP-1 has priority as to the accounts.
>
> **Example 2:** In Example 1, if SP-2 had filed directly against accounts, the date of that filing as to accounts would be compared with the date of SP-1's filing as to the inventory. The first filed would prevail under Section 9-322(a)(1).
>
> **Example 3:** If SP-3 had filed against accounts in Example 1 before either SP-1 or SP-2 filed against inventory, SP-3's filing against accounts would have priority over the filings of SP-1 and SP-2. This result obtains even though the filings against inventory are effective to continue the perfected status of SP-1's and SP-2's security interest in the accounts beyond the 20-day period of automatic perfection. See Section 9-315. SP-1's and SP-2's position as to the inventory does not give them a claim to accounts (as proceeds of the inventory) which is senior to someone who has filed earlier against accounts. If, on the other hand, either SP-1's or SP-2's filing against the inventory preceded SP-3's filing against accounts, SP-1 or SP-2 would outrank SP-3 as to the accounts.

10. **Purchase-Money Security Interests in Livestock.** New subsections (d) and (e)

provide a purchase-money priority rule for farm-products livestock. They are patterned on the purchase-money priority rule for inventory found in subsections (b) and (c) and include a requirement that the purchase-money secured party notify earlier-filed parties. Two differences between subsections (b) and (d) are noteworthy. First, unlike the purchase-money inventory lender, the purchase-money livestock lender enjoys priority in *all* proceeds of the collateral. Thus, under subsection (d), the purchase-money secured party takes priority in accounts over an earlier-filed accounts financer. Second, subsection (d) affords priority in certain products of the collateral as well as proceeds.

11. **Purchase-Money Security Interests in Aquatic Farm Products.** Aquatic goods produced in aquacultural operations (e.g., catfish raised on a catfish farm) are farm products. See Section 9-102 (definition of "farm products"). The definition does not indicate whether aquatic goods are "crops," as to which the model production money security interest priority in Section 9-324A applies, or "livestock," as to which the purchase-money priority in subsection (d) of this section applies. This Article leaves courts free to determine the classification of particular aquatic goods on a case-by-case basis, applying whichever priority rule makes more sense in the overall context of the debtor's business.

12. **Purchase-Money Security Interests in Software.** Subsection (f) governs the priority of purchase-money security interests in software. Under Section 9-103(c), a purchase-money security interest arises in software only if the debtor acquires its interest in the software for the principal purpose of using the software in goods subject to a purchase-money security interest. Under subsection (f), a purchase-money security interest in software has the same priority as the purchase-money security interest in the goods in which the software was acquired for use. This priority is determined under subsections (b) and (c) (for inventory) or (a) (for other goods).

13. **Multiple Purchase-Money Security Interests.** New subsection (g) governs priority among multiple purchase-money security interests in the same collateral. It grants priority to purchase-money security interests securing the price of collateral (i.e., created in favor of the seller) over purchase-money security interests that secure enabling loans. Section 7.2(c) of the Restatement (3d) of the Law of Property (Mortgages) (1997) adopts this rule with respect to real property mortgages. As Comment *d* to that section explains:

> the equities favor the vendor. Not only does the vendor part with specific real estate rather than money, but the vendor would never relinquish it at all except on the understanding that the vendor will be able to use it to satisfy the obligation to pay the price. This is the case even though the vendor may know that the mortgagor is going to finance the transaction in part by borrowing from a third party and giving a mortgage to secure that obligation. In the final analysis, the law is more sympathetic to the vendor's hazard of losing real estate previously owned than to the third party lender's risk of being unable to collect from an interest in real estate that never previously belonged to it.

The first-to-file-or-perfect rule of Section 9-322 applies to multiple purchase-money security interests securing enabling loans.

14. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the references to "authenticated" in the pre-2022 text of this section.

**Section 9-325. Priority of Security Interests in Transferred Collateral**

* * *

**Official Comment**

* * *

**Section 9-326. Priority of Security Interests Created by New Debtor**

* * *

**Official Comment**

* * *

**Section 9-326A. Priority of Security Interest in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible**

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

**Official Comment**

* * *

**Section 9-327. Priority of Security Interests in Deposit Account**

* * *

**Official Comment**

* * *

**Section 9-328. Priority of Security Interests in Investment Property**

* * *

**Official Comment**

* * *

8. **Relation to Other Law.** Section ~~1-103~~1-103(b) provides that "unless displaced by particular provisions of [the Uniform Commercial Code]~~this Act~~, the principles of law and equity . . . ~~shall~~ supplement its provisions." There may be circumstances in which a secured party's action in acquiring a security interest that has priority under this section constitutes conduct that is wrongful under other law. Though the possibility of such resort to other law may provide an appropriate "escape valve" for cases of egregious conduct, care must be taken to ensure that this does not impair the certainty and predictability of the priority rules. Whether a court may appropriately look to other law to impose liability upon or estop a secured party from asserting its Article 9 priority depends on an assessment of the secured party's conduct under the standards established by such other law as well as a determination of whether the particular application of such other law is displaced by the UCC.

* * *

**Section 9-329. Priority of Security Interests in Letter-Of-Credit Right**

* * *

**Official Comment**

* * *

**Section 9-330. Priority of Purchaser of Chattel Paper or Instrument**

* * *

**Official Comment**

* * *

7. **Instruments.** Subsection (d) contains a special priority rule for instruments. Under this subsection, a purchaser of an instrument has priority over a security interest perfected by a method other than possession (e.g., by filing, temporarily under Section 9-312(e) or (g), as proceeds under Section 9-315(d), or automatically upon attachment under Section 9-309(4) if the security interest arises out of a sale of the instrument) if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party. Generally, to the extent subsection (d) conflicts with Section 3-306, subsection (d) governs. See Section 3-102(b). For example, notice of a conflicting security interest precludes a purchaser from becoming a holder in due course under Section 3-302 and thereby taking free of all claims to the instrument under Section 3-306. However, a purchaser

who takes even with knowledge of the security interest qualifies for priority under subsection (d) if it takes without knowledge that the purchase violates the rights of the holder of the security interest. Likewise, a purchaser qualifies for priority under subsection (d) if it takes for "value" as defined in Section ~~1-201~~1-204, even if it does not take for "value" as defined in Section 3-303.

* * *

**Section 9-331. Priority of Rights of Purchasers of Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Documents, Instruments, and Securities under Other Articles; Priority of Interests in Financial Assets and Security Entitlements and Protection against Assertion of Claim under Articles 8 and 12**

* * *

**Official Comment**

* * *

3. **Rights Acquired by Purchasers.** The rights to which this section refers are set forth in Sections 3-305 and 3-306 (holder in due course), 7-502 (holder to whom a negotiable document of title has been duly negotiated), and 8-303 (protected purchaser). The holders and purchasers referred to in this section do not always take priority over a security interest. See, e.g., Section 7-503 (affording paramount rights to certain owners and secured parties as against holder to whom a negotiable document of title has been duly negotiated). Accordingly, this section adds the clause, "to the extent provided in Articles 3, 7, and 8" to former Section 9-309.

The state-law Uniform Electronic Transactions Act (UETA) and the federal Electronic Signature in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq*. (E-SIGN), provide certain rules for records referred to and defined as "transferable records." See UETA Section 16 and E-SIGN, 15 U.S.C. § 7021. When certain conditions have been met, those acts confer on a person the status of a "holder" (as defined in 1-201(b)(21)~~, formerly Section 1-201(20)~~) of an "equivalent record" under pre-1998 Section 9-308 (now, in part, Section 9-330) and the rights and defenses of a "purchaser" under that section, among other effects. E-SIGN also refers to the rights and defenses of a purchaser under Section 9-330. As a matter of the application of the Uniform Commercial Code, those are not the only sections of the Uniform Commercial Code that would logically be affected by UETA and E-SIGN. For example, the rights of a holder in due course under Section 9-331(a) would also be covered by the application of those acts, when the conditions for applicability have been satisfied.

* * *

5. **Collections by Junior Secured Party.** Under this section, a secured party with a junior security interest in receivables (accounts, chattel paper, promissory notes, or payment intangibles) may collect and retain the proceeds of those receivables free of the claim of a senior secured party to the same receivables, if the junior secured party is a holder in due course of the proceeds. In order to qualify as a holder in due course, the junior must satisfy the requirements of Section 3-302, which include taking in "good faith." This means that the junior not only must act "honestly" but also must observe "reasonable commercial standards of fair dealing" under the particular circumstances. See Section 9-102(a). Although "good faith" does not impose a general duty of inquiry, e.g., a search of the records in filing offices, there may be circumstances in which "reasonable commercial standards of fair dealing" would require such a search.

Consider, for example, a junior secured party in the business of financing or buying accounts who fails to undertake a search to determine the existence of prior security interests. Because a search, under the usages of trade of that business, would enable it to know or learn upon reasonable inquiry that collecting the accounts violated the rights of a senior secured party, the junior may fail to meet the good-faith standard. See *Utility Contractors Financial Services, Inc. v. Amsouth Bank*, ~~NA,~~ 985 F.2d 1554 (11th Cir. 1993). Likewise, a junior secured party who collects accounts when it knows or should know under the particular circumstances that doing so would violate the rights of a senior secured party, because the debtor had agreed not to grant a junior security interest in, or sell, the accounts, may not meet the good-faith test. Thus, if a junior secured party conducted or should have conducted a search and a financing statement filed on behalf of the senior secured party states such a restriction, the junior's collection would not meet the good-faith standard. On the other hand, if there was a course of performance between the senior secured party and the debtor which placed no such restrictions on the debtor and allowed the debtor to collect and use the proceeds without any restrictions, the junior secured party may then satisfy the requirements for being a holder in due course. This would be more likely in those circumstances where the junior secured party was providing additional financing to the debtor on an on-going basis by lending against or buying the accounts and had no notice of any restrictions against doing so. Generally, the senior secured party would not be prejudiced because the practical effect of such payment to the junior secured party is little different than if the debtor itself had made the collections and subsequently paid the secured party from the debtor's general funds. Absent collusion, the junior secured party would take the funds free of the senior security interests. See Section 9-332. In contrast, the senior secured party is likely to be prejudiced if the debtor is going out of business and the junior secured party collects the accounts by notifying the account debtors to make payments directly to the junior. Those collections may not be consistent with "reasonable commercial standards of fair dealing."

Whether the junior secured party qualifies as a holder in due course is fact-sensitive and should be decided on a case-by-case basis in the light of those circumstances. Decisions such as *Financial ~~Management~~ Mgmt. Servs.~~ices~~ Inc. v. Familian*, 905 P.2d 506 (Ariz. App. Div. 1995) (finding holder in due course status) could be determined differently under this application of the good-faith requirement.

* * *

**Section 9-332. Transfer of Money; Transfer of Funds from Deposit Account**

* * *

**Official Comment**

* * *

**Section 9-333. Priority of Certain Liens Arising by Operation of Law**

* * *

**Official Comment**

* * *

**Section 9-334. Priority of Security Interests in Fixtures and Crops**

* * *

**Official Comment**

* * *

13. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-335. Accessions**

* * *

**Official Comment**

* * *

**Section 9-336. Commingled Goods**

* * *

**Official Comment**

* * *

The results in the foregoing examples remain the same, regardless of whether SP-1 or SP-2 (or each) has a purchase-money security interest. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

**Section 9-337. Priority of Security Interests in Goods Covered by Certificate of Title**

* * *

**Official Comment**

* * *

**Section 9-338. Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information**

* * *

**Official Comment**

* * *

**Section 9-339. Priority Subject to Subordination**

* * *

**Official Comment**

* * *

**[SUBPART 4. RIGHTS OF BANK]**

**Section 9-340. Effectiveness of Right of Recoupment or Set-Off against Deposit Account**

* * *

**Official Comment**

* * *

**Section 9-341. Bank's Rights and Duties with Respect to Deposit Account**

* * *

**Official Comment**

* * *

6. "**Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-342. Bank's Right to Refuse to Enter into or Disclose Existence of Control Agreement**

* * *

**Official Comment**

* * *

**PART 4**

**RIGHTS OF THIRD PARTIES**

**Section 9-401. Alienability of Debtor's Rights**

* * *

**Official Comment**

* * *

**Section 9-402. Secured Party Not Obligated on Contract of Debtor or in Tort**

* * *

**Official Comment**

* * *

**Section 9-403. Agreement Not to Assert Defenses against Assignee**

* * *

**Official Comment**

* * *

6. **Relationship to Other Law.** Like former Section 9-206(1), this section takes no position on the enforceability of waivers of claims and defenses by consumer account debtors, leaving that question to other law. However, the reference to "law other than this article" in subsection (e) encompasses administrative rules and regulations; the reference in former Section 9-206(1) that it replaces ("statute or decision") arguably did not.

This section does not displace other law that gives effect to a non-consumer account debtor's agreement not to assert defenses against an assignee, even if the agreement would not qualify under subsection (b). See subsection (f). It validates, but does not invalidate, agreements made by a non-consumer account debtor. This section also does not displace other law to the extent that the other law permits an assignee, who takes an assignment with notice of a claim of a property or possessory right, a defense, or a claim in recoupment, to enforce an account debtor's agreement not to assert claims and defenses against the assign*or* (e.g., a "hell-or-high-water" agreement). See Comment 4. It also does not displace an assignee's right to assert that an account debtor is estopped from asserting a claim or defense. Nor does this section displace other law with respect to waivers of potential future claims and defenses that are the subject of an agreement between the account debtor and the assign*ee*. Finally, it does not displace Section ~~1-107~~1-306, concerning waiver of a breach that allegedly already has occurred.

**Section 9-404. Rights Acquired by Assignee; Claims and Defenses against Assignee**

* * *

**Official Comment**

* * *

6. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-405. Modification of Assigned Contract**

* * *

**Official Comment**

* * *

**Section 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective**

* * *

**Official Comment**

* * *

12. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-407. Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor's Residual Interest**

* * *

**Official Comment**

* * *

2. **Restrictions on Assignment Generally Ineffective.** Under subsection (a), as under former Section 2A-303(3), a term in a lease agreement which prohibits or restricts the creation of a security interest generally is ineffective. This reflects the general policy of Section 9-406(d) and former Section 9-318(4). This section has been conformed in several respects to analogous provisions in Sections 9-406, 9-408, and 9-409, including the substitution of "ineffective" for "not enforceable" and the substitution of "assignment or transfer of, or the~~*~~ creation, attachment, perfection, or enforcement of a security interest" for "creation or enforcement of a security interest." ~~**Amendments in italics approved by the Permanent Editorial Board for Uniform Commercial Code October 20, 1999.*~~

* * *

**Section 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective**

* * *

**Official Comment**

* * *

11. **Applicability to Promissory Notes.** Subsection (g) ensures that this section applies to a negotiable instrument that would be a promissory note but for (i) the exclusion of writings that evidence chattel paper from the definition of "instrument" (Section 9-102(a)(47), as revised in 2022) and (ii) the definition of "promissory note" (Section 9-102(a)(65)) as a subset of "instrument." See Section 9-406, Comment 5.

**Section 9-409. Restrictions on Assignment of Letter-Of-Credit Rights Ineffective**

* * *

**Official Comment**

* * *

**PART 5**

**FILING**

**[SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT]**

**Section 9-501. Filing Office**

* * *

**Official Comment**

* * *

**Section 9-502. Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement**

* * *

**Official Comment**

* * *

3. **Debtor's Signature; Required Authorization.** Subsection (a) sets forth the simple formal requirements for an effective financing statement. These requirements are: (1) the debtor's name; (2) the name of a secured party or representative of the secured party; and (3) an indication of the collateral.

* * *

Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this Article. See Sections 1-103 and 9-509, Comment 3. However, under Section 9-509(b), the debtor's signing of (or becoming bound by) a security agreement *ipso facto* constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

**Section 9-503. Name of Debtor and Secured Party**

* * *

**Official Comment**

* * *

**Section 9-504. Indication of Collateral**

* * *

**Official Comment**

* * *

**Section 9-505. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions**

* * *

**Official Comment**

* * *

3. **Changes from Former Section 9-408.** This section expands the rule of former Section 9-408 to embrace more generally other bailments and transactions, as well as sales transactions, primarily sales of payment intangibles and promissory notes. It provides the same benefits for compliance with a statute or treaty described in Section 9-311(a) that former Section 9-408 provided for filing, in connection with the use of terms such as "lessor," consignor," etc. The references to "owner" and "registered owner" are intended to address, for example, the situation where a putative lessor is the registered owner of an automobile covered by a certificate of title and the transaction is determined to create a security interest. Although this section provides that the security interest is perfected, the relevant certificate-of-title statute may expressly provide to the contrary or may be ambiguous. If so, it may be necessary or advisable to amend the certificate-of-title statute to ensure that perfection of the security interest will be achieved.

As did former Section 1-201, ~~former~~ pre-1998 Article 9 referred to transactions, including leases and consignments, "intended as security." This misleading phrase created the erroneous impression that the parties to a transaction can dictate how the law will classify it (e.g., as a bailment or as a security interest) and thus affect the rights of third parties. This Article deletes the phrase wherever it appears. Subsection (b) expresses the principle more precisely by referring to a security interest that "secures an obligation."

* * *

**Section 9-506. Effect of Errors or Omissions**

* * *

**Official Comment**

* * *

2. **Errors and Omissions.** Like former Section 9-402(8), subsection (a) is in line with the policy of this Article to simplify formal requisites and filing requirements. It is designed to discourage the fanatical and impossibly refined reading of statutory requirements in which courts occasionally have indulged themselves. Subsection (a) provides the standard applicable to indications of collateral. Subsections (b) and (c), which are new, concern the effectiveness of financing statements in which the debtor's name is incorrect. Subsection (b) contains the general rule: a financing statement that fails sufficiently to provide the debtor's name in accordance with Section 9-503(a) is seriously misleading as a matter of law. Subsection (c) provides an exception: If the financing statement nevertheless would be discovered in a search under the debtor's correct name, using the filing office's standard search logic, if any, then as a matter of law the incorrect name does not make the financing statement seriously misleading. A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office's standard search logic to search a data base other than that of the filing office. For purposes of subsection (c), any name that satisfies Section 9-503(a) at the time of the search is a "correct name."

* * *

In addition to requiring the debtor's name and an indication of the collateral, Section 9-502(a) requires a financing statement to provide the name of the secured party or a representative of the secured party. Inasmuch as searches are not conducted under the secured party's name, and no filing is needed to continue the perfected status of security interest after it is assigned, an error in the name of the secured party or its representative will not be seriously misleading. However, in an appropriate case, an error of this kind may give rise to an estoppel in favor of a particular holder of a conflicting claim to the collateral. See Section ~~1-103~~1-103(b).

* * *

**Section 9-507. Effect of Certain Events on Effectiveness of Financing Statement**

* * *

**Official Comment**

* * *

3. **Post-Filing Disposition of Collateral.** Under subsection (a), a financing statement remains effective even if the collateral is sold or otherwise disposed of. This subsection clarifies the third sentence of former Section 9-402(7) by providing that a financing statement remains effective following the disposition of collateral only when the security interest or agricultural lien continues in that collateral. This result is consistent with the conclusion of PEB Commentary No. 3. Normally, a security interest does continue after disposition of the collateral. See Section 9-315(a). Law other than this Article determines whether an agricultural lien survives disposition of the collateral.

* * *

**Example 1:** Dee Corp. is an Illinois corporation. It creates a security interest in its equipment in favor of Secured Party. Secured Party files a proper financing statement in Illinois. Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania corporation, subject to the security interest. The security interest continues, see Section 9-315(a), and remains perfected, see Section 9-507(a), notwithstanding that the financing statement is filed under "D" (for Dee Corp.) and not under "B." However, because Bee Corp. is located in Pennsylvania and not Illinois, see Section 9-307, unless Secured Party perfects under Pennsylvania law within one year after the transfer, its security interest will become unperfected and will be deemed to have been unperfected against purchasers of the collateral. See Section 9-316.

4. **Other Post-Filing Changes.** Subsection (b) provides that, as a general matter, post-filing changes that render a financing statement seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: Section 9-508 and Section 9-507(c). Section 9-508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. It is discussed in the Comments to that section. Section 9-507(c) addresses cases in which a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503(a) with respect to the named debtor but, at a later time, no longer does so.

**Example ~~1~~2:** Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor's California driver's license, "James McGinty." Debtor obtains a court order changing his name to "Roger McGuinn" but does not change his driver's license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

* * *

**Example ~~2~~3:** The facts are as in Example ~~1~~2. Debtor's driver's license expires one year after the entry of the court order changing Debtor's name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-503(a) is the individual name of the debtor or the debtor's surname and first personal name. The name "James McGinty" has become insufficient.

**Example ~~3~~4:** The facts are as in Example ~~1~~2. Before the license expires, Debtor renews the license. The name indicated on the new license is "Roger McGuinn." Upon issuance of the new license, "James McGinty" becomes insufficient as the debtor's name under Section 9-503(a).

* * *

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor's "correct" name, using the filing office's standard search logic. See Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a "correct name" for these purposes. Thus, assuming that a search of the records of the California filing office under "Roger McGuinn," using the filing office's standard search logic, would not disclose a financing statement naming "James McGinty," the financing statement in Examples ~~2~~3 and ~~3~~4 has become seriously misleading and Section 9-507(c) applies.

If a filed financing statement becomes seriously misleading because the name it provides for a debtor becomes insufficient, the financing statement, unless amended to provide a sufficient name for the debtor, is effective only to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. If an amendment that provides a sufficient name is filed within four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change. If an amendment that provides a sufficient name is filed more than four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change, but only from the time of the filing of the amendment. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

**Section 9-508. Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement**

* * *

**Official Comment**

* * *

**Section 9-509. Persons Entitled to File a Record**

* * *

**Official Comment**

* * *

3. **Unauthorized Filings.** Records filed in the filing office do not require signatures for their effectiveness. Subsection (a)(1) substitutes for the debtor's signature on a financing statement the requirement that the debtor authorize in a signed record the filing of an initial financing statement or an amendment that adds collateral. Also, under subsection (a)(1), if an amendment adds a debtor, the debtor who is added must authorize the amendment. A person who files an unauthorized record in violation of subsection (a)(1) is liable under Section 9-625(b) and (e) for actual and statutory damages. Of course, a filed financing statement is ineffective to perfect a security interest if the filing is not authorized. See Section 9-510(a). Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this section. See Sections 1-103, 9-502, Comment 3. This Article applies to other issues, such as the priority of a security interest perfected by the filing of a financing statement. See Section 9-322, Comment 4. ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

9. **"Signed" and "Signing" Replace "Authenticated" and "Authenticating."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate terms "signed" and "signing" replace the references to "authenticated" and "authenticating" in the pre-2022 text of this section.

**Section 9-510. Effectiveness of Filed Record**

* * *

**Official Comment**

* * *

**Section 9-511. Secured Party of Record**

* * *

**Official Comment**

* * *

**Section 9-512. Amendment of Financing Statement**

* * *

**Official Comment**

* * *

**Section 9-513. Termination Statement**

* * *

**Official Comment**

* * *

6. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the references to "authenticated" in the pre-2022 text of this section.

**Section 9-514. Assignment of Powers of Secured Party of Record**

* * *

**Official Comment**

* * *

**Section 9-515. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement**

* * *

**Official Comment**

* * *

**Section 9-516. What Constitutes Filing; Effectiveness of Filing**

* * *

**Official Comment**

* * *

6. **Uncertainty Concerning Individual Debtor's Surname.** Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's

surname (e.g., it is unclear whether the debtor's ~~name~~ surname is Elton or John).

* * *

**Section 9-517. Effect of Indexing Errors**

* * *

**Official Comment**

* * *

**Section 9-518. Claim Concerning Inaccurate or Wrongfully Filed Record**

* * *

**Official Comment**

* * *

**[SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE]**

**Section 9-519. Numbering, Maintaining, and Indexing Records; Communicating Information Provided in Records**

* * *

**Official Comment**

* * *

**Section 9-520. Acceptance and Refusal to Accept Record**

* * *

**Official Comment**

* * *

**Section 9-521. Uniform Form of Written Financing Statement and Amendment**

* * *

**Official Comment**

* * *

**Section 9-522. Maintenance and Destruction of Records**

* * *

**Official Comment**

* * *

**Section 9-523. Information from Filing Office; Sale or License of Records**

* * *

**Official Comment**

* * *

**Section 9-524. Delay by Filing Office**

* * *

**Official Comment**

* * *

**Section 9-525. Fees**

* * *

**Official Comment**

* * *

**Section 9-526. Filing-Office Rules**

* * *

**Official Comment**

* * *

**Section 9-527. Duty to Report**

* * *

**Official Comment**

* * *

**PART 6**

**DEFAULT**

**[SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST]**

**Section 9-601. Rights after Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes**

* * *

**Official Comment**

* * *

2. **Enforcement: In General.** The rights of a secured party to enforce its security interest in collateral after the debtor's default are an important feature of a secured transaction. (Note that the term "right~~s~~," as defined in Section ~~1-201~~1-201(b)(34), includes ~~"remedies."~~a "remedy.") This Part provides those rights as well as certain limitations on their exercise for the protection of the defaulting debtor, other creditors, and other affected persons. However, subsections (a) and (d) make clear that the rights provided in this Part do not exclude other rights provided by agreement.

3. **When Remedies Arise.** Under subsection (a) the secured party's rights arise "[a]fter default." As did former Section 9-501, this Article leaves to the agreement of the parties the circumstances giving rise to a default. This Article does not determine whether a secured party's post-default conduct can constitute a waiver of default in the face of an agreement stating that such conduct shall not constitute a waiver. Rather, it continues to leave to the parties' agreement, as supplemented by law other than this Article, the determination whether a default has occurred or has been waived. See Section ~~1-103~~1-103(b).

* * *

**Section 9-602. Waiver and Variance of Rights and Duties**

* * *

**Official Comment**

* * *

2. **Waiver: In General.** Section ~~1-102(3)~~1-302 addresses which provisions of the UCC are mandatory and which may be varied by agreement. With exceptions relating to good faith, diligence, reasonableness, and care, immediate parties, as between themselves, may vary its provisions by agreement. However, in the context of rights and duties after default, our legal system traditionally has looked with suspicion on agreements that limit the debtor's rights and free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no mortgage clause has ever been allowed to clog the equity of redemption." The context of default offers great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in common sense. This section, like former Section 9-501(3), codifies this long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the secured party may not be waived or varied except as stated. Provisions that are not specified in this section are subject to the general rules in Section ~~1-102(3)~~1-302(a).

* * *

5. **Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in limited circumstances. These waivers must be made in agreements that are signed. Under Section ~~1-201~~1-201(b)(3), an "'agreement' means the bargain of the parties in fact." In considering waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully scrutinize putative agreements that appear in records that also address many additional or unrelated matters.

**Section 9-603. Agreement on Standards Concerning Rights and Duties**

* * *

**Section 9-604. Procedure If Security Agreement Covers Real Property or Fixtures**

* * *

**Official Comment**

* * *

**Section 9-605. Unknown Debtor or Secondary Obligor**

* * *

**Official Comment**

* * *

**Section 9-606. Time Of Default for Agricultural Lien**

* * *

**Official Comment**

* * *

**Section 9-607. Collection and Enforcement by Secured Party**

* * *

**Official Comment**

* * *

5. **Collections by Junior Secured Party.** A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this section, even if the security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d), as a holder in due course of an instrument under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a) or (c). See Sections 9-330, Comment 7; 9-331, Comment 5; and 9-332.

* * *

**Section 9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus**

* * *

**Official Comment**

* * *

6. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-609. Secured Party's Right to Take Possession after Default**

* * *

**Official Comment**

* * *

**Section 9-610. Disposition of Collateral after Default**

* * *

**Official Comment**

* * *

3. **Time of Disposition.** This Article does not specify a period within which a secured party must dispose of collateral. This is consistent with this Article's policy to encourage private dispositions through regular commercial channels. It may, for example, be prudent not to dispose of goods when the market has collapsed. Or, it might be more appropriate to sell a large inventory in parcels over a period of time instead of in bulk. Of course, under subsection (b) every aspect of a disposition of collateral must be commercially reasonable. This requirement explicitly includes the "method, manner, time, place and other terms." For example, if a secured party does not proceed under Section 9-620 and holds collateral for a long period of time without disposing of it, and if there is no good reason for not making a prompt disposition, the secured party may be determined not to have acted in a "commercially reasonable" manner. See also Section ~~1-203~~1-304 (general obligation of good faith).

* * *

5. **Disposition by Junior Secured Party.** Disposition rights under subsection (a) are not limited to first-priority security interests. Rather, any secured party as to whom there has been a default enjoys the right to dispose of collateral under this subsection. The exercise of this right by a secured party whose security interest is subordinate to that of another secured party does not of itself constitute a conversion or otherwise give rise to liability in favor of the holder of the senior security interest. Section 9-615 addresses application of the proceeds of a disposition by a junior secured party. Under Section 9-615(a), a junior secured party owes no obligation to apply the proceeds of disposition to the satisfaction of obligations secured by a senior security interest. Section 9-615(g) builds on this general rule by protecting certain juniors from claims of a senior concerning cash proceeds of the disposition. Even if a senior were to have a non-Article 9 claim to proceeds of a junior's disposition, Section 9-615(g) would protect a junior that acts in good faith and without knowledge that its actions violate the rights of a senior party. Because the disposition by a junior would not cut off a senior's security interest or other lien (see Section 9-617), in many (probably most) cases the junior's receipt of the cash proceeds would not violate the rights of the senior.

* * *

When a secured party's collateral is encumbered by another security interest or other lien, one of the claimants may seek to invoke the equitable doctrine of marshaling. As explained by the Supreme Court, that doctrine "rests upon the principle that a creditor having two funds to satisfy his debt, may not by his application of them to his demand, defeat another creditor, who may resort to only one of the funds." *Meyer v. United States*, 375 U.S. 233, 236 (1963), quoting *Sowell v. Federal Reserve Bank*, 268 U.S. 449, 456-57 (1925). The purpose of the doctrine is "to prevent the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." Id. at 237. Because it is an equitable doctrine, marshaling "is

applied only when it can be equitably fashioned as to all of the parties" having an interest in the property. Id. This Article leaves courts free to determine whether marshaling is appropriate in any given case. See Section ~~1-103~~1-103(b).

* * *

7. **Public vs. Private Dispositions.** This Part maintains two distinctions between "public" and other dispositions: (i) the secured party may buy at the former, but normally not at the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of "the time and place of a public disposition" and notification of "the time after which" a private disposition or other intended disposition is to be made (Section 9-613(a)(1)(E)). It does not retain the distinction under former Section 9-504(4), under which transferees in a noncomplying public disposition could lose protection more easily than transferees in other noncomplying dispositions. Instead, Section 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a "public disposition" is one at which the price is determined after the public has had a meaningful opportunity for competitive bidding. "Meaningful opportunity" is meant to imply that some form of advertisement or public notice must precede the sale (or other disposition) and that the public must have access to the sale (disposition).

* * *

**Section 9-611. Notification before Disposition of Collateral**

* * *

**Official Comment**

* * *

5. **Signature Requirement.** Subsections (b), (c), and (e) explicitly provide that notifications must be "signed." Some cases read pre-1998 Section 9-504(3) as validating oral notification. Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the references to "authenticated" in the pre-2022 text of this section.

* * *

**Section 9-612. Timeliness of Notification before Disposition of Collateral**

* * *

**Official Comment**

* * *

**Section 9-613. Contents and Form of Notification before Disposition of Collateral:**

**General.**

* * *

**Official Comment**

* * *

2. **Contents of Notification.** To comply with the "reasonable signed notification" requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a consumer-goods transaction, the contents of a notification that includes the information set forth in paragraph (a)(1) are sufficient as a matter of law, unless the parties agree otherwise. (The reference to "time" of disposition means here, as it did in former Section 9-504(3), not only the hour of the day but also the date.) Although a secured party may choose to include additional information concerning the transaction or the debtor's rights and obligations, no additional information is required unless the parties agree otherwise. A notification that lacks some of the information set forth in paragraph (a)(1) nevertheless may be sufficient if found to be reasonable by the trier of fact, under paragraph (a)(2). A properly completed sample form of notification in paragraph (a)(5) or in Section 9-614(a)(3) is an example of a notification that would contain the information set forth in paragraph (a)(1). Under paragraph (a)(4), however, no particular phrasing of the notification is required.

This section applies to a notification of a public disposition conducted electronically. A notification of an electronic disposition satisfies subparagraph (a)(1)(E) if it states the time when the disposition is scheduled to begin and states the electronic location. For example, under the technology current in 2010, the Uniform Resource Locator (URL) or other Internet address where the site of the public disposition can be accessed suffices as an electronic location.

3. ~~[~~**Style Changes in Safe-Harbor Form and Medium Neutrality**~~]~~ No change in substance is intended by the changes in style to the form provided in paragraph (5) of the pre-2022 text of this section. However, the presentation and explanation of how to use the form has been simplified and clarified.

**Section 9-614. Contents and Form of Notification before Disposition of Collateral: Consumer-goods Transaction**

* * *

**Official Comment**

* * *

2. **Notification in Consumer-goods Transactions.** Paragraph (a)(1) sets forth the information required for a reasonable notification in a consumer-goods transaction. A notification that lacks any of the information set forth in paragraph (a)(1) is insufficient as a matter of law. Compare Section 9-613(a)(2), under which the trier of fact may find a notification

to be sufficient even if it lacks some information listed in paragraph (a)(1) of that section.

3. **Safe-Harbor Form of Notification; Errors in Information.** Although paragraph (a)(2) provides that a particular phrasing of a notification is not required, paragraph (a)(3) specifies a safe-harbor form that, when properly completed, satisfies paragraph (a)(1). Paragraphs (a)(4), (5), and (6) contain special rules applicable to erroneous and additional information. Under paragraph (a)(4), a notification in the safe-harbor form specified in paragraph (a)(3) is not rendered insufficient if it contains additional information at the end of the form. Paragraph (a)(5) provides that non-misleading errors in information contained in a notification are permitted if the safe-harbor form is used *and if the errors are in information not required by paragraph (a)(1)*. Finally, if a notification is in a form other than the paragraph (a)(3) safe-harbor form, other law determines the effect of including in the notification information other than that required by paragraph (a)(1).

4. ~~[~~**Style Changes in Safe-Harbor Form and Medium Neutrality**~~]~~**.** No change in substance is intended by the changes in style to the form provided in paragraph (3) of the pre-2022 text of this section, except that in furtherance of medium neutrality references to "electronic record" and "electronic communication method" have been added to the form. However, the presentation and explanation of how to use the form has been simplified and clarified.

**Section 9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus**

* * *

**Official Comment**

* * *

8. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-616. Explanation of Calculation of Surplus or Deficiency**

* * *

**Official Comment**

* * *

5. **"Signed" Replaces "Authenticated"; Medium Neutrality.** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section. In furtherance of medium neutrality, the reference in the pre-2022 text of this section to a "written demand" has been

replaced by a reference to a "demand in a record" and the reference to a "writing" has been replaced by a reference to a "record."

**Section 9-617. Rights of Transferee of Collateral**

* * *

**Official Comment**

* * *

2. **Title Taken by Good-Faith Transferee.** Subsection (a) sets forth the rights acquired by persons who qualify under subsection (b) – transferees who act in good faith. Such a person is a "transferee," inasmuch as a buyer at a foreclosure sale does not meet the definition of "purchaser" in Section ~~1-201~~1-201(b)(29) and (30) (the transfer is not, vis-a-vis the debtor, "voluntary"). By virtue of the expanded definition of the term "debtor" in Section 9-102(a)(28), subsection (a) makes clear that the ownership interest of a person who bought the collateral subject to the security interest is terminated by a subsequent disposition under this Part. Such a person is a debtor under this Article. Under former Article 9, the result arguably was the same, but the statute was less clear. Under subsection (a), a disposition normally discharges the security interest being foreclosed and any subordinate security interests and other liens.

* * *

**Section 9-618. Rights and Duties of Certain Secondary Obligors**

* * *

**Official Comment**

* * *

**Section 9-619. Transfer of Record or Legal Title**

* * *

**Official Comment**

* * *

**Section 9-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral**

* * *

**Official Comment**

* * *

11. **Role of Good Faith.** Section 1-304 imposes an obligation of good faith on a secured party's enforcement under this Article. This obligation may not be disclaimed by agreement. See Section ~~1-302~~1-302(b). Thus, a proposal and acceptance made under this section in bad faith would not be effective. For example, a secured party's proposal to accept marketable securities worth $1,000 in full satisfaction of indebtedness in the amount of $100, made in the hopes that the debtor might inadvertently fail to object, would be made in bad faith. On the other hand, in the normal case proposals and acceptances should be not second-guessed on the basis of the "value" of the collateral involved. Disputes about valuation or even a clear excess of collateral value over the amount of obligations satisfied do not necessarily demonstrate the absence of good faith.

* * *

13. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the references to "authenticated" in the pre-2022 text of this section.

**Section 9-621. Notification of Proposal to Accept Collateral**

* * *

**Official Comment**

* * *

3. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the reference to "authenticated" in the pre-2022 text of this section.

**Section 9-622. Effect of Acceptance of Collateral**

* * *

**Official Comment**

* * *

**Section 9-623. Right to Redeem Collateral**

* * *

**Official Comment**

* * *

**Section 9-624. Waiver**

* * *

**Official Comment**

* * *

3. **"Signed" Replaces "Authenticated."** Consistent with the revised definition of "sign" in Section ~~1-201~~1-201(b)(37), the cognate term "signed" replaces the references to "authenticated" in the pre-2022 text of this section.

**[SUBPART 2. NONCOMPLIANCE WITH ARTICLE]**

**Section 9-625. Remedies for Secured Party's Failure to Comply with Article**

* * *

**Official Comment**

* * *

2. **Remedies for Noncompliance; Scope.** Subsections (a) and (b) provide the basic remedies afforded to those aggrieved by a secured party's failure to comply with this Article. Like all provisions that create liability, they are subject to Section 9-628, which should be read in conjunction with Section 9-605. The principal limitations under this Part on a secured party's right to enforce its security interest against collateral are the requirements that it proceed in good faith (Section ~~1-203~~1-304), in a commercially reasonable manner (Sections 9-607 and 9-610), and, in most cases, with reasonable notification (Sections 9-611 through 9-614). Following former Section 9-507, under subsection (a) an aggrieved person may seek injunctive relief, and under subsection (b) the person may recover damages for losses caused by noncompliance. Unlike former Section 9-507, however, subsections (a) and (b) are not limited to noncompliance with provisions of this Part of Article 9. Rather, they apply to noncompliance with any provision of this Article. The change makes this section applicable to noncompliance with Sections 9-207 (duties of secured party in possession of collateral), 9-208 (duties of secured party having control over deposit account), 9-209 (duties of secured party if account debtor has been notified of an assignment), 9-210 (duty to comply with request for accounting, etc.), 9-509(a) (duty to refrain from filing unauthorized financing statement), and 9-513(a) or (c) (duty to provide termination statement). Subsection (a) also modifies the first sentence of former Section 9-507(1) by adding the references to "collection" and "enforcement." Subsection (c)(2), which gives a minimum damage recovery in consumer-goods transactions, applies only to noncompliance with the provisions of this Part.

Subsection (a) displaces other state law governing availability of the types of relief

addressed in that subsection to the extent that the other state law would preclude the availability of injunctive relief in an otherwise appropriate case solely because the aggrieved party would be able to obtain a collectible money judgment for noncompliance with the rules of this Article. Rather, under subsection (a), in an appropriate case the aggrieved party should be able to obtain relief of the sort described in that subsection even if it would be possible for the aggrieved party to obtain such a judgment. See PEB Commentary No. 27, dated December 16, 2022, discussing the issue in the context of a noncomplying disposition under Section 9-610. The Commentary is available at https://www.ali.org/peb-ucc.

3. **Damages for Noncompliance with This Article.** Subsection (b) sets forth the basic remedy for failure to comply with the requirements of this Article: a damage recovery in the amount of loss caused by the noncompliance. Subsection (c) identifies who may recover under subsection (b). It affords a remedy to any aggrieved person who is a debtor or obligor. However, a principal obligor who is not a debtor may recover damages only for noncompliance with Section 9-616, inasmuch as none of the other rights and duties in this Article run in favor of such a principal obligor. Such a principal obligor could not suffer any loss or damage on account of noncompliance with rights or duties of which it is not a beneficiary. Subsection (c) also affords a remedy to an aggrieved person who holds a competing security interest or other lien, regardless of whether the aggrieved person is entitled to notification under Part 6. The remedy is available even to holders of senior security interests and other liens. The exercise of this remedy is subject to the normal rules of pleading and proof. A person who has delegated the duties of a secured party but who remains obligated to perform them is liable under this subsection. The last sentence of subsection (d) eliminates the possibility of double recovery or other over-compensation arising out of a reduction or elimination of a deficiency under Section 9-626, based on noncompliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance. Assuming no double recovery, a debtor whose deficiency is eliminated under Section 9-626 may pursue a claim for a surplus. Because Section 9-626 does not apply to consumer transactions, the statute is silent as to whether a double recovery or other over-compensation is possible in a consumer transaction.

Damages for violation of the requirements of this Article, including Section 9-609, are those reasonably calculated to put an eligible claimant in the position that it would have occupied had no violation occurred. See Section ~~1-106~~1-305(a). Subsection (b) supports the recovery of actual damages for committing a breach of the peace in violation of Section 9-609, and principles of tort law supplement this subsection. See Section ~~1-103~~1-103(b). However, to the extent that damages in tort compensate the debtor for the same loss dealt with by this Article, the debtor should be entitled to only one recovery.

* * *

**Section 9-626. Action in Which Deficiency or Surplus Is in Issue**

* * *

**Official Comment**

* * *

3. **Rebuttable Presumption Rule.** Subsection (a) establishes the rebuttable presumption rule for transactions other than consumer transactions. Under paragraph (a)(1), the secured party need not prove compliance with the relevant provisions of this Part as part of its prima facie case. If, however, the debtor or a secondary obligor raises the issue (in accordance with the forum's rules of pleading and practice), then the secured party bears the burden of proving that the collection, enforcement, disposition, or acceptance complied. In the event the secured party is unable to meet this burden, then paragraph (a)(3) explains how to calculate the deficiency. Under this rebuttable presumption rule, the debtor or obligor is to be credited with the greater of the actual proceeds of the disposition or the proceeds that would have been realized had the secured party complied with the relevant provisions. If a deficiency remains, then the secured party is entitled to recover it. The references to "the secured obligation, expenses, and attorney's fees" in paragraphs (a)(3) and (4) embrace the application rules in Sections 9-608(a) and 9-615(a).

Unless the secured party proves that compliance with the relevant provisions would have yielded a smaller amount, under paragraph (a)(4) the amount that a complying collection, enforcement, or disposition would have yielded is deemed to be equal to the amount of the secured obligation, together with expenses and attorney's fees. Thus, the secured party may not recover any deficiency unless it meets this burden.

* * *

**Section 9-627. Determination of Whether Conduct Was Commercially Reasonable**

* * *

**Official Comment**

* * *

**Section 9-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor**

* * *

**Official Comment**

* * *

**PART 7**

**TRANSITION**

**Section 9-701. Effective Date**

* * *

**Official Comment**

* * *

**Section 9-702. Savings Clause**

* * *

**Official Comment**

* * *

**Section 9-703. Security Interest Perfected before Effective Date**

* * *

**Official Comment**

* * *

3. **Interpretation of Pre-Effective-Date Security Agreements.** Section 9-102 defines "security agreement" as "an agreement that creates or provides for a security interest." Under Section ~~1-201(3)~~1-201(b)(3), an "agreement" is a "bargain of the parties in fact." If parties to a pre-effective-date security agreement describe the collateral by using a term defined in former Article 9 in one way and defined in this Article in another way, in most cases it should be presumed that the bargain of the parties contemplated the meaning of the term under former Article 9.

* * *

**Section 9-704. Security Interest Unperfected before Effective Date**

* * *

**Official Comment**

* * *

**Section 9-705. Effectiveness of Action Taken before Effective Date**

* * *

**Official Comment**

* * *

**Section 9-706. When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement**

* * *

**Official Comment**

* * *

Although it has the effect of continuing the effectiveness of a pre-effective-date financing statement, an initial financing statement described in this section is not a continuation statement. Rather, it is governed by the rules applicable to initial financing statements. (However, the debtor need not authorize the filing. See Section 9-708.) Unlike a continuation statement, the initial financing statement described in this section may be filed any time during the effectiveness of the pre-effective-date financing statement – even before this Article is enacted – and not only within the six months immediately prior to lapse. In contrast to a continuation statement, which extends the lapse date of a filed financing statement for five years, the initial financing statement has its own lapse date, which bears no relation to the lapse date of the pre-effective-date financing statement whose effectiveness the initial financing statement continues. See subsection (b). ~~*Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*~~

* * *

**Section 9-707. Amendment of Pre-Effective-Date Financing Statement**

* * *

**Official Comment**

* * *

**Section 9-708. Persons Entitled to File Initial Financing Statement or Continuation Statement**

* * *

**Official Comment**

* * *

**Section 9-709. Priority**

* * *

**Official Comment**

* * *

## PART 8

## TRANSITION PROVISIONS FOR 2010 AMENDMENTS

**Section 9-801. Effective Date**

* * *

**Official Comment**

* * *

**Section 9-802. Savings Clause**

* * *

**Section 9-803. Security Interest Perfected before Effective Date**

* * *

**Section 9-804. Security Interest Unperfected before Effective Date**

* * *

**Section 9-805. Effectiveness of Action Taken before Effective Date**

* * *

**Section 9-806. When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement**

* * *

**Section 9-807. Amendment of Pre-Effective-Date Financing Statement**

* * *

**Section 9-808. Person Entitled to File Initial Financing Statement or Continuation Statement**

* * *

**Section 9-809. Priority**

* * *

**APPENDICES**
**APPENDIX I – [OMITTED]**
APPENDIX II MODEL PROVISIONS FOR PRODUCTION-MONEY PRIORITY

* * *

**[Model Section [9-103a]. "Production-Money Crops"; "Production-Money Obligation"; Production-Money Security Interest; Burden of Establishing**

* * *

**Official Comment**

* * *

**[Model Section [9-324a]. Priority of Production-Money Security Interests and Agricultural Liens**

* * *

**Official Comment**

* * *