

House Judiciary Committee Meeting
Thursday, January 14, 1965

The House Judiciary Committee met in joint session with the Senate Judiciary Committee in Room 529 at 10:50 A.M. with Chairman Steadman Ball, Senate Judiciary Committee, presiding. Nineteen members of the House Judiciary Committee were present. Members Griffith and Hill were absent.

Chairman Ball called the meeting to order.

Senator Ball stated that this meeting had been called in order to acquaint the members of both Judiciary Committees with the Uniform Commercial Code, which will be introduced as a bill in the 1965 Session of the Kansas Legislature. He stated that a number of joint meetings will be held in regard to this matter. He pointed out that one of the major projects or problems of this session is a matter of the adoption of the Uniform Commercial Code. He went on to explain that under the direction of Senate Concurrent Resolution No. 19 of the 1963 Kansas Legislature, the Kansas Legislative Council was directed: "... To make or have made a thorough and complete study of the effect that enactment of the uniform commercial code would have on the existing Kansas statutory and case law, have printed sufficient copies of a report containing the results of such study for distribution to members of the 1965 legislature and to individuals and groups which such enactment would directly affect, and to make such recommendations as it shall see fit to adopt to the 1965 regular session of the legislature." Pursuant to this resolution, the Judiciary Committee of the Council spent two years studying this matter. He stated that briefly, the plan is to permit the Senate Judiciary Committee to introduce this as a bill and then have joint meetings to get the consent of both the House and Senate Judiciary Committees. He then introduced Senator Howard W. Harper, Chairman of the Legislative Council Committee on Judiciary.

Senator Harper introduced the people who had served on this committee: Senator Ball, Representative Charles Arthur, Senator William S. Bowers and Representative T. Richard Liebert.

Senator Harper stated that this work is nothing more nor less than the best thought of the leading people in the business. He stated that in regard to Kansas business law, you don't find much and what there is, is not related to the laws of other states. He explained that the legislature does its work through subcommittees and that they often hire experts to do this. He

went on to state that this is what they did. They read all decisions that had to do with business transactions handed down in the supreme court. These annotations are in this book, Uniform Commercial Code: Kansas Annotations, of which all the members were given a copy. If this is adopted, it will do for you in your daily practice, about what the legislature did for you in 1963 when we passed the eminent domain bill; put them in one section.

Senator Harper went on to explain that in preparing the bill, the Committee held hearings with representatives of the Kansas Banker's Association committee on the Uniform Commercial Code, the Kansas Association of Railroads, and the Kansas Savings and Loan League. In addition, the chairman of the Kansas Bar Association committee on the Uniform Commercial Code submitted his individual comments and suggestions. Prepared statements from these conferees are available in the Research Department. Two of the Kansas annotators, Dean John E. Howe and Professor Charles H. Oldfather, also participated in these hearings and subsequently provided the Committee with supplementary information. The technical points of the bill have been reviewed by the revisor of statutes office and two of the Kansas annotators.

Senator Harper stated that two additional bills are recommended for enactment along with the Uniform Commercial Code. The first one is an act prescribing requirements for and recording and filing certain security interests of railroads and public utilities which would replace present provisions in K.S.A. 66-1206, 66-1207, and 66-1208. Enactment of this bill would in no way affect the principal of uniformity of the Code. The second bill involves the criminal provisions of the present uniform acts that would be replaced by the Code. These statutes will be retained but simply located in a different article of the Kansas statutes.

Senator Harper pointed out that there is also available a pamphlet, Uniform Commercial Code: Information Report. This gives a good thumbnail sketch of what is in the Code itself. A copy of this is attached.

Senator Harper also pointed out that each of you have your own notions how a sentence should be written. One of the problems that legislators have had over the country is the unwillingness to accept the other fellows writings. The Code ought to be left like it is.

He then thanked the members of the committees for the

opportunity to talk to them.

Senator Ball thanked Senator Harper. He pointed out that few things that have been referred to the Legislative Council have gotten as much study as this. He stressed that uniformity is of the utmost importance. He stated that every state which adjoins this state has adopted this Code. He corroborated what Senator Harper had stated in regard to all interested parties in every segment of our society having been heard. They all urge the adoption of this. There are some problems because we don't have this.

Senator Ball then introduced Professor Charles H. Oldfather of Kansas University School of Law.

Professor Oldfather stated that this is a new experience to him. He gave the background concerning the Uniform Commercial Code. This information is contained in the attached Uniform Commercial Code: Informational Report. He then briefly covered some of the articles contained in the Code.

Article 1 - general provisions, definitions, and declarations of policies applicable throughout the Code.

Article 2 - Sales - encompasses not only the traditional body of sales law, but embraces as well some subject matter of general contract law which has not previously been confided.

Article 3 - primarily a revision of the Uniform Negotiable Instruments Law (NIL), which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1896 and enacted into law in Kansas in 1911.

Article 9 - comprehensive scheme for the regulation of security interests in personal property and fixtures as set forth in the Code would amend, replace, or relocate most of the present Kansas statutes dealing with such security devices.

Article 10 - consists of the sections which set the effective date of the act; provide for the repeal of the uniform acts and the other specific laws replaced by the Code; and specify the laws not repealed under the Code.

Professor Oldfather said that he wanted to say one final thing and that was that this Code, the work started in 1945, drafted, submitted to all interested parties and the culmination of the best opinions, he hopes we will enact it too.

Senator Ball then introduced Dean John E. Howe, Washburn University School of Law.

Dean Howe pointed out that he is not an expert. He too briefly gave the background of the Code. He also pointed out that this Code had been enacted in Pennsylvania over ten years and there have been no suggestions that they repeal the Code. He then briefly went over some of the articles.

Article 1 - definitions.

Article 5 - letters of credit - used mainly in purchasing articles from another country. There has been no prior statutory law in Kansas.

Article 6 - bulk transfers - restates the present law, although some changes will result from the Code's attempt to make the law of all states uniform on this subject.

Article 7 - a consolidation and revision of the law relating to warehouse receipts, bills of lading and other documents of title. Attempts to provide a set of rules. There is no great change, just brings up-to-date.

Article 8 - investment securities - a negotiable instruments law with respect to such securities. Makes some changes, but not any earth shaking ones.

He went on to say that if you put the ten articles together, it is an attempt to have a statutory set of rules. This is not a model act. This is a uniform act.

Senator Ball thanked all the gentlemen speaking for their presentation. He then again stressed that, as pointed out by all those speaking, this should be kept uniform. He reiterated the statements of the other gentlemen concerning the study, work and combined opinions. He went on to state that what they want is to be authorized to introduce this act and refer it back and to have joint meetings with the House Judiciary Committee so that we could come to agreement before the bill goes to the two houses. It is going to take a while for this to be printed

because it is long. He also stated that he hopes there will be very few changes, assuming there will be some. He then asked if they may have the rules suspended and just reprint those that are changed.

Senator Glee Smith pointed out that the lines will be numbered on each page so there will be no special consideration made of this.

Senator Smith then moved that the Uniform Commercial Code be introduced as a Senate bill with the understanding that it will be referred back to the Judiciary Committee and they will meet jointly with the House Judiciary Committee concerning this.

Senator Steinger seconded the motion.

Chairman Ball asked if there was any discussion. There was none. The motion carried unanimously.

There being no further business, the meeting adjourned at 12:10 P.M. The next regular meeting will be announced.

Respectfully submitted,
Jack Euler

Minutes approved:

Uniform Commercial Code: Informational Report

Prepared By
Kansas Legislative Council
Topeka, Kansas
December, 1964

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UNIFORM COMMERCIAL CODE:
INFORMATIONAL REPORT

Prepared for the

Committee on Judiciary

Senator Howard Harper, Chairman
Senator Steadman Ball, Vice-Chairman
Representative Charles Arthur
Senator William S. Bowers
Representative T. Richard Liebert

December, 1964

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Research Department
Kansas Legislative Council

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FOREWORD

Under direction of Senate Concurrent Resolution No. 19 of the 1963 Kansas legislature, the Kansas Legislative Council was directed:

" . . . To make or have made a thorough and complete study of the effect that enactment of the uniform commercial code would have on the existing Kansas statutory and case law, have printed sufficient copies of a report containing the results of such study for distribution to members of the 1965 legislature and to individuals and groups which such enactment would directly affect, and to make such recommendations as it shall see fit to adopt to the 1965 regular session of the legislature."

For purposes of conducting this study, this proposal was referred to the Judiciary Committee of the Council. The committee concluded immediately that, before serious discussion of the advisability of enacting the Uniform Commercial Code could be conducted in Kansas, it would be necessary to have available to legislators and interested citizens -- attorneys, businessmen, warehousemen, and others -- accurate information about the relationship of the Code to existing Kansas law.

To provide the annotations, which comprise a section by section analysis of the Code, the Committee secured the services of John E. Howe, Dean, Washburn University Law School; Charles H. Oldfather, Professor of Law, University of Kansas; Curtis D. Terflinger, Associate Professor of Business Law, Wichita State University; and Mr. J. Eugene Balloun, Attorney at Law, Great Bend, Kansas.

A further conclusion of the committee was that not everyone who would be interested in the possibility of Kansas adopting the Code would have use for the definitive survey of Kansas annotations. The primary interest of many businessmen, for example, would be in a more general publication that could acquaint them with the purposes, background, and scope of the material covered in the Code. This informational publication, therefore, is offered to the interested public for their greater awareness of the development, concepts, and general content of the Uniform Commercial Code.

The research department wishes to acknowledge the further cooperation of the annotators in preparing the summaries of each article of the Code which appear in this report.

INTRODUCTION TO THE CODE

With the enactment of the Uniform Commercial Code in 29 states, the importance of this body of law in commercial activity in Kansas can no longer be overlooked. Equally important to the number of states which have adopted the Code is that the list contains many of the most highly industrialized states with which Kansas business is conducted -- New York, Pennsylvania, Michigan, Illinois, Ohio, and California -- and such adjacent and nearby states as Missouri, Nebraska, Oklahoma, Arkansas, New Mexico, and Wyoming.

In addition to those states already adopting the Code, practically all other states have studied or engaged in some type of study or promotional activity for enactment of the Code in the last three years. Because of the wide interest shown in the Code, it would appear that the number of adopting states will increase steadily during the years to come.

Impressive as is this record of adoption and interest in the Code in other states, it does not mean that Kansas should enact automatically the Uniform Commercial Code without a thorough study of its contents and knowledge of its application to commercial and legal situations in the state. The answers to many questions must be made available to persons in all interested groups: What are the Code's purposes? How will the Code affect consumers, businessmen, attorneys, and other groups engaged in commercial transactions? What existing Kansas law would be changed? To what extent will present business practices be altered if the Code were adopted? What is the effect of the Code in interstate business? What is the experience with the Code in other states?

Questions of a general nature are discussed in this publication. More specific and detailed information concerning the effect of the Code on Kansas law is available in a larger publication: Uniform Commercial Code; Kansas Annotations.*

Purposes of the Uniform Commercial Code

What is the Uniform Commercial Code? To define by a description of intent, the Code seeks to codify into one body of law the presently scattered statutory items of commercial law. The Code covers all subjects involving commercial transactions. In Kansas, as in other states, codification would mean that some subjects will be made a part of statutory law which are now covered primarily by case law and general accepted practices.

* Copies of this report (Publication No. 249) are available on request from the Research Department, Kansas Legislative Council, State House, Topeka, Kansas.

The Code is based on the concept that "commercial transactions" is a single subject of the law notwithstanding its many facets. For example, the ordering of appliances by either a retailer or an individual may involve a contract for sale; followed by the sale; the issuance of a check or draft for a portion of the purchase price; and the acceptance of some security for the balance. The check or draft may be negotiated and may pass through one or more banks for collection. When the appliances are shipped or stored, they may be covered by a bill of lading, a warehouse receipt, or by both.

The premise of the Code also is that every phase of commercial activity is part of a single transaction, namely, the sale and payment of goods. Thus the word "uniform" in the Uniform Commercial Code might refer, in part, to the development of a single, unified, integrated body of commercial law.

To carry the example of the appliances one step further, assume that they are manufactured in another state. As noted in the list of adopting states, there presently is a better than 50% chance that the state from which any manufactured goods are shipped has enacted the Code. While the transaction might be carried out without legal difficulty, it would be a matter of general convenience and advantage for the Kansas purchaser if he could rely upon the law as having the same application in a multi-state transaction as in a purely Kansas transaction. Uniformity of the law among the various jurisdictions is one of the underlying purposes of the Code.

One writer pointed up the need for uniformity in state commercial laws in the following statement:

"When you consider that we now have fifty legislatures grinding out laws at a tremendous rate of speed on all phases of . . . a transaction, the need for uniformity is at once obvious. With uniformity comes predictability - predictability as to what the law is in a particular multi-state situation."

As well as seeking to obtain uniformity of legislative acts, the Code has been developed to achieve uniformity of court decisions, regardless of the states in which actions may be adjudicated. Factors designed to assist the judiciary in construing provisions uniformly include the clarity of the Code's language, its comprehensive quality, and the "official" comments which set forth the purposes of each provision. For these same reasons, the amount of commercial litigation under the Code probably has lessened.

It was reported to the National Conference of Commissioners of Uniform State Laws in 1961, that during the first six years experience in Pennsylvania:

" . . . there were only 87 decisions construing the Code. Of the 87 cases, only six were decided by the Supreme Court of Pennsylvania,

and only three by the United States Court of Appeals for the Third Circuit. None of these decisions reflect any difficulty in understanding exactly what the language of the Code meant in applying it to the facts of the various cases."

Development of the Code

In 1940, a proposal was first submitted that the National Conference of Commissioners on Uniform State Laws to develop a Uniform Commercial Code as a single, modern, comprehensive law to be enacted by all jurisdictions. Actually, the National Conference was considering proposed revisions of the Uniform Sales Act in order to avoid possible conflicts between that act and a proposed Federal Sales Act which had been introduced in the Federal Congress. Spurred in part by this prospect of federal action in an area in which states had previously had a free hand, the National Conference undertook immediate planning for the Uniform Commercial Code project.

In addition to the prospect of federal action in the field, other factors encouraged the acceptance of the concepts underlying the Uniform Commercial Code. Of the nine acts promulgated by the National Conference in the area of commercial transactions, only three, the Uniform Negotiable Instruments Law (NIL), promulgated in 1896, the Uniform Warehouse Receipts Act (1906), and the Uniform Stock Transfer Act (1909), had been enacted by every state.

As for the other uniform acts, the scope of which is encompassed within the Uniform Commercial Code, Kansas is one of several states which has not enacted the Uniform Sales Act (1906), the Bills of Lading Act (1909), the Conditional Sales Act (promulgated 1918; withdrawn 1943), and the Uniform Trust Receipts Act (1933). One section of the Uniform Fiduciaries Act (1922), which has not been adopted in Kansas, is incorporated in the Uniform Commercial Code.

Another problem with some of the above uniform laws is that the intended uniformity has been diluted through various state amendments and through conflicting interpretations over a period of years. In the 196 substantive sections of the NIL, for example, the number of statutory variations by states ranged from amendment of two sections in one state to 51 changes in another state. Conflicting interpretations by the courts have been reported for over 75 sections of the NIL.

Non-uniformity of amendments of uniform laws has been illustrated by a set of amendments to make the Uniform Sales Act and the Uniform Warehouse Receipts Act conform with the Uniform Bills of Lading Act. Twenty-six states adopted these three acts, of which eight states adopted none of the amendments later promulgated, eight other states adopted some but not all of the amendments, and the remaining ten amended both the sales and warehouse receipts acts.

After commencing work on the Code project in 1940, the National Conference was joined in the initial drafting process in 1942 by the American Law Institute. This latter group, whose membership consists of prominent judges, lawyers, and teachers of law from throughout the country, had been engaged for a number of years in preparing "restatements" of case law for purposes of clarification and simplification of the law in a number of legal areas such as torts, contracts, property, and trusts. The work of the two organizations in preparing the Code was financed by a grant from the Falk Foundation of Pittsburgh, and with additional contributions from business and financial concerns and from law firms.

Drafting work continued on the Code during the 1940's and by 1950 the first hearings with a completed draft were held with the American Bar Association, state bar associations, and business groups representing, among others, bankers, warehousemen, and finance companies. A number of the changes suggested were incorporated in the Code text, which was approved in 1951 by the sponsoring organizations and by the House of Delegates of the American Bar Association.

The completed text of the Code with comments was first published in 1952. Of interest in Kansas is the fact that copies of this edition were purchased with an appropriation from the 1953 legislature for the purpose of familiarizing the legislature, state officers, and members of the bar with provisions of the Code.

Pennsylvania was the first state to adopt the Uniform Commercial Code; the effective date was set for July 1, 1954. Following that enactment, the New York Law Revision Commission conducted an intensive line-by-line examination of the Code. In February, 1956, the New York Commission released a report endorsing the concept of a uniform code covering commercial law subjects but expressed the opinion that the draft, as enacted in Pennsylvania, would be unsuitable for New York.

As a result of this report and the suggestions made by the New York Commission, the Editorial Board of the Uniform Commercial Code issued a revised edition in late 1956. This version was adopted by Massachusetts in 1957 and Kentucky in 1958. The next adoptions were in Connecticut and New Hampshire in 1959; Rhode Island and Pennsylvania (to conform to revised version) in 1960; Arkansas, Illinois, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, and Wyoming in 1961; Alaska, Georgia, Michigan, and New York in 1962; and California, Indiana, Maine, Maryland, Missouri, Montana, Nebraska, Tennessee, West Virginia, and Wisconsin in 1963. The United States Congress enacted the Code for the District of Columbia in 1963, and, in 1964, Virginia adopted the Code.

One other significant development in the evolution of the Code was the creation in 1961 of the Code's Permanent Editorial Board. This Board is to review

the Code at least once every five years and, with the approval of the sponsoring organizations, recommend amendments to keep the Code up to date. The first report of the Editorial Board including recommendations for the amendment of the Code was published in 1962. By the means of the "official" adoption or rejection of various state amendments which alter the Code, the goal of uniformity of state laws relating to commercial activity appears to be possible.

CONTENT OF THE CODE

The Uniform Commercial Code has been described as a practical solution to the problem of adapting our law to meet the expanding needs of modern business. It is not "reform" legislation in the sense that it does not take sides in issues between such groups as debtors and creditors, banks and finance companies, or consumers and businessmen.

Nonetheless, as a comprehensive revision of commercial law, enactment of the Code would affect directly or indirectly many aspects of Kansas business activity. In many instances, of course, the Code and Kansas statutory and case law are in agreement. There are, however, sections of the Code for which there is no specific Kansas statutory statement, and there are other sections which represent a more modern statement of current business practices than does existing Kansas law.

Each of the ten articles of the Code are outlined below along with comments on the general nature of each article. Some specific situations are mentioned in which the Code would necessitate a significant change in Kansas business methods or procedure.

Article 1 - General Provisions

Contained within this Article are the general provisions, definitions, and declarations of policies applicable throughout the Code. Among the more important features is the series of 46 definitions having general application throughout the Code. Some of the definitions are in familiar usage in commercial law ("good faith," "delivery," and "holder"); others are restatements or modifications of existing terms ("purchase" and "insolvency proceedings"); and some definitions embody new, substantive concepts ("conspicuous" and "document of title").

Included in Article 1 is a framework for resolving conflict of law problems between states, a matter of particular interest since all states have

not yet enacted the Code. The Article affirms the right of parties, when a transaction bears a "reasonable relation" to both a Code and non-Code state, to agree on the state law which shall apply. Where there is no such agreement, the Code applies to transactions bearing an "appropriate relation to this state." There are six specific limitations listed to the choice of law concept, most of which are designed to prevent fraud on the part of a third party.

Freedom of contract is preserved with parties to commercial transactions allowed to agree on standards of performance but with obligations of good faith, diligence, reasonableness, and care not to be disclaimed by agreement. Among other provisions included is an appeal for uniform and liberal construction, the principles of interpretation, and a statute of frauds for kinds of personal property not otherwise covered by the Code.

Article 2 - Sales

Article 2 encompasses not only the traditional body of sales law, but embraces as well some subject matter of general contract law which has not previously been codified. Noteworthy are the provisions in Part 2 which relate to the proof, formation, construction, modification, and assignment of contracts. The Code's attention in these sections is directed at some of the technical rules and constructions which have tended to frustrate the reasonable expectations of parties to a sales transaction.

In contrast with prior law, the Code makes a firm offer in writing by a merchant binding without a consideration. Modifications of sales contracts are sustained without regard to the doctrine of consideration. The technical rules of offer and acceptance are relaxed by the Code's criterion that acceptance may be by any manner or medium reasonable under the circumstances. An acceptance may be effective to consummate a contract despite additional terms contained in it. The Code tolerates a considerable degree of indefiniteness in the agreement if the parties have entertained a contractual intent and there is a reasonable basis for granting a remedy. Some aspects of the Statute of Frauds and the parol evidence rule are liberalized.

Article 2 is more than a revision of the Uniform Sales Act. It is the result of a rethinking of traditional sales law. It attempts to relate the law to modern business needs and in the process discards some purely legal conceptions. Most notable is the rejection of "title" as the fundamental factor in the law of sales. In the words of the Commissioners comment:

"The purpose is to avoid making practical issues between practical men turn upon the location of an intangible something, the passing of which no man can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible character."

Under the Uniform Sales Act and the common law, many of the issues between buyer and seller turned on a determination of who had title to the goods at a particular time. Title was determined by the intent of the parties or, in the absence of a finding of intent, the courts resorted to rules of "presumed intention." In place of this elusive and generalized title approach, the Code deals with the various issues between buyer and seller by specific provision in terms of the status of performance under the contract.

Illustrative of Code provisions which specifically declare rights, obligations, or remedies without reference to title, but which can be determined under present law only after location of title has been determined, are: (1) section 2-501 stating who has an insurable interest in the goods; (2) section 2-502, relating to the buyer's right to identified goods upon the seller's insolvency; (3) sections 2-509 and 2-510 stating which party bears the risk of loss under various circumstances; (4) section 2-709 stating when the seller is entitled to maintain an action for the contract price; and (5) section 2-716 defining the buyer's right to replevin.

To illustrate the Code's approach, section 2-509 allocates risk of loss to the merchant-seller prior to delivery where the contract involves delivery at the seller's place of business. This provision was included because it is the seller, not the buyer, who is in a position to safeguard and insure the goods pending physical delivery. Also, by this forthright approach the Code avoids the arbitrariness of title and the difficulties inherent in its determination.

The provisions of Article 2 relating to breach and remedy do not depart significantly from present law. However, the Code does tend to de-emphasize technical breach and strict compliance in favor of approaches which will further the continuance of the contract and meet the reasonable expectations of commercial men. The remedial courses of action open to the buyer and seller are broadened by eliminating a number of legalistic restrictions. Remedies exist irrespective of the status of title and are generally cumulative and not exclusive. Such restrictive rules of present law as those relating to mitigation of damages have been supplanted by the standard of commercial reasonableness. The Code thus provides flexibility of action after breach with respect to such matters as completion of manufacture, resale, or the effecting of cover, without prospective penalty for reasonable conduct. Loss of remedy is not likely to occur under the Code to a party who acts reasonably and in good faith after breach.

Enactment of Article 2 would not require repeal or amendment of any present Kansas statutes. The Kansas "law of sales" consists of a few hundred cases of general application which touch on probably no more than ten percent of the subject matter of Article 2. The Code's approach would not necessarily change the results of the relatively few cases affected by this article. The Code's

impact in the sales area is also mitigated by the fact that most of the provisions of Article 2 are applicable "unless otherwise agreed." Thus the effect of most provisions can be varied by appropriate contract provision. The incomplete characteristic of the Kansas "law of sales" makes increased certainty one of the principal benefits to be gained by enactment of Article 2.

Article 3 - Commercial Paper

Article 3 is primarily a revision of the Uniform Negotiable Instruments Law (NIL), which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1896 and enacted into law in Kansas in 1911. Article 3, as its title indicates, governs the basic types of commercial paper (checks, drafts, certificates of deposit, and promissory notes) presently governed by the NIL. It makes no major changes in the NIL. Extensive litigation occurring under the NIL has demonstrated, however, certain inadequacies in the NIL, which the Kansas annotators have divided into three general classes.

First, there have been ambiguities and inconsistencies in the NIL which have sometimes resulted in uniform judicial treatment and sometimes in conflicting judicial treatment. One source reports that the courts in the different states have reached inconsistent results in construing 80 of the 196 sections of the NIL since its promulgation nearly 70 years ago. Article 3 reconciles many of these conflicting interpretations by adopting and stating in usable form one of the divergent rules laid down by different courts; in one section, a choice of conflicting interpretations is offered to the enacting state.

Second, the Code attempts to clarify the case law that has developed on subjects not covered or inadequately covered by the NIL. Examples of this codification of case law include sections on fictitious payees and imposters; negligence contributing to a forgery or alteration; contract of a guarantor; warrants on presentment; restrictive endorsements; and time of presentment.

The third problem cited by the Kansas annotators is that the NIL has not been adequate in solving the large and intricate problems raised by the check collection process and has been an inconvenient source for determining the negotiability status of long-term investment paper, such as corporate or government bonds. Accordingly, a separate article of the Code, Article 4, was developed to cover the subject of bank collections and deposits; and all investment securities are governed by Article 8.

Article 4 - Bank Deposits and Collections

The traffic in checks is enormous and country-wide. Banks with less than \$5,000,000 on deposit handle as many as 2,000 checks a day while a single Federal Reserve Bank may handle 1,000,000 checks a day. Obviously,

both uniformity and precision are necessary, so that the relationship of bank-to-bank and depositor-to-bank can be readily determined. Presently the many sources of governing rules on the subject are: the common law of contracts, agency and trusts; the NIL; Federal Reserve regulations and operating letters; rules of local clearing house associations; custom; contracts between parties; and scattered legislation. While many states have adopted the American Bankers Association Bank Collection Code, Kansas has not. Consequently, Kansas statutory law in this area is found in some provisions of the NIL (K.S.A., Ch. 52) and in K.S.A., Ch. 9, Art. 12, dealing with deferred posting and other miscellaneous matters.

Article 4 is a codification of the well-defined patterns of banking operations. Part 1 contains general provisions and definitions. Part 2 deals with collections related to depository and collecting banks. Part 3 concerns collections and payor banks. Part 4 covers bank-customer relations. Part 5 supplies rules concerning collection of documentary drafts.

Because of the factual complexity of the check collection process, it can be said that, except for Part 4, a working familiarity with the process is a prerequisite to reading Article 4 with any discrimination. For this reason, a person particularly interested in this subject will want to read Article 4 itself, along with the Code comments and Kansas annotations thereto.

Part 4, on the other hand, is a clarification of some of the common problems arising between a bank and its customer. Codified is the right of a bank to charge its customer's account, even though the charge creates an overdraft. Also codified is the generally accepted liability of a payor bank for wrongful dishonor of its customer's check, but when the dishonor occurs through mistake, recovery is limited to actual damages proved, including such consequential damages as arrest or prosecution of the customer.

Another problem of importance arises when the drawer of a check dies or becomes incompetent before the check is paid. Under the Code, the bank may continue to pay or collect items until it learns of the customer's death or adjudication of incompetency. It may also continue to pay checks for ten days after death, even though it has knowledge thereof, unless ordered to stop payment by one who claims an interest in the account.

The Code continues the common law duty of a customer to examine his bank statements and paid items and to notify the bank with reasonable promptness of a forgery of his signature or of an alteration, at pain of being precluded for asserting such irregularities. At the same time it codifies the majority (and Kansas) rule that the bank's own negligence bars it from relying on its customer's failure to examine and notify.

Article 5 - Letters of Credit

Article 5 deals with letters of credit, a highly specialized device for the transmission of moneys for which there has been no prior statutory law in Kansas. Under this device, the credit of a bank or other institution of known financial standing is substituted for the obligation of its customer for financing the purchase and sale of goods. Letters of credit have been used principally in international trade where a buyer is unwilling to pay for the goods before shipment and the seller is unwilling to ship the goods without assurances of being paid.

More specifically, a bank's customer (a buyer) may engage the bank ("issuer" of the letter) to honor drafts or other demands for payment of the seller ("beneficiary" of the credit) upon compliance with the conditions specified in the letter of credit. Usually, the conditions specified for payment are that certain documents of title accompany the drafts when presented. One of the important features of this device is that it can be an economical means of financing because the letter is independent of the sales transaction, and the charges can be kept correspondingly low.

Article 5 sets forth certain basic rules concerning the obligations of advising and confirming banks and the warranties made by banks negotiating or presenting drafts under a letter of credit. More frequent use of this device, including the use in transactions completely within the United States, may be expected with the framework for this mechanism included in the Uniform Commercial Code.

Article 5, to a large extent, is based on the "Uniform Customs and Practice for Documentary Credits" codified by the International Chamber of Commerce. The Article is not intended to be a comprehensive statute, but rather it codifies basic principles, leaving to custom, agreement, and decisional law many details of future development of the law.

Article 6 - Bulk Transfers

The present Kansas bulk sales law (K.S.A., Ch. 58, Art. 1), which has remained unchanged since its enactment in 1915, would be replaced by Article 6. To a large extent, Article 6 restates the present law, although some changes will result from the Code's attempt to make the law of all states uniform on this subject.

Bulk sales laws are designed to protect the unsecured creditor who lends money to merchants in reliance on the fact that the merchant normally will maintain a fairly constant inventory of goods. Both the Kansas law and Article 6 apply to sales not in the ordinary course of business. Critics of bulk

sales laws argue that such laws are obstacles in the sale of a business and are often misunderstood by, or completely unknown to, the inexperienced buyer. The Code remedies such defects by requiring compliance with the bulk transfers article only in those cases where fraud is most likely to occur.

The Code makes few changes in Kansas law, one exception being that the buyer does not have the option of receiving a bond from the seller in lieu of sending the notices to the creditors of the seller as is provided by K.S.A. 58-102. Examples of other changes relate to the present Kansas provisions that a sale in bulk is void as against the transferor's creditors unless transferee receives a complete list of the creditors at least seven days prior to the sale and unless the transferee notifies every creditor stated in the list. The Code changes the notice time from seven days to ten days and provides for a short form of notice to creditors in a case where the transferor's debts are to be paid in full, and for a more detailed form for other cases. Another new requirement of the Code is that the transferee must preserve the list of creditors and a schedule of property transferred for a period of six months after the transfer.

Article 7 - Warehouse Receipts, Bills of Lading and Other Documents of Title

Article 7 is a consolidation and revision of the law relating to warehouse receipts, bills of lading and other documents of title. The Article is a modernized successor to the existing Uniform Warehouse Receipts Act (enacted by Kansas in 1909), the Uniform Bills of Lading Act (not enacted in Kansas) and 14 sections of the Uniform Sales Act (not enacted in Kansas) dealing with documents of title. It should be noted at the outset that this Article deals with the documents, not with the business of warehousemen or carriers which are subjects left to regulatory laws.

The basic concept or rules of documents of title have not been seriously altered under the Code and substantive changes in the law are few. However, the experience acquired since promulgation of the uniform acts has been drawn upon to fill gaps, remove inconsistencies, and cover with greater precision areas where litigation has evidenced some weaknesses in the older acts. Additional new coverage includes provision for shipping and storage practices not contemplated by the original acts, such as bonded storage required by federal or state statutes, air bills, and problems arising under modern shipping practices whereby goods may arrive prior to receipt of the documents of title.

There are a few policy changes in Article 7, the principal ones being: expansion of the definition of a warehouseman to include governmental and cooperative warehouses; that the holder of a warehouse receipt cannot recover goods sold by a warehouseman to a bona fide purchaser; and authorization for a

court to order the issuance of a substitute document in the event of lost, stolen, or destroyed documents, rather than only being able to order delivery of the goods to end the bailment. Article 7 omits provisions of earlier uniform acts establishing crimes and penalties for certain misconduct involving documents of title, although the legislature may retain such provisions in statutes separate from the Code. In general, the Code provisions are patterned after the federal bills of lading act which will continue to cover bills of lading in interstate commerce.

Article 8 - Investment Securities

Public investment in business enterprise through the media of private corporate equity and debt obligations, stocks, bonds, government debt obligations, mortgage certificates, and trust certificates are the subjects dealt with in Article 8. Since the Article deals with the rights and liabilities of parties involved in the transfer of investment securities, it is, in effect, a negotiable instruments law with respect to such securities. Thus the Article is neither a Blue Sky Law nor a corporation code.

Article 8 will replace the Uniform Stock Transfer Act (enacted in Kansas in 1947) and will supplement the Uniform Negotiable Instruments Law (enacted in Kansas in 1905) insofar as that law applies to investment securities. Essentially, Article 8 unifies the law applying to investment securities, clarifies the law, and extends aspects of the NIL to investment securities, particularly those giving greater protection to bona fide purchasers. The Article deals with rights and liabilities of parties involved in the transfer of investment securities and covers problems involved in the relationship between issuer and first holder, problems of transfers between holders, and problems of registering the transfer upon the books of the issuer.

The definition of a "security" instrument (section 8-102) makes it clear that negotiability does not depend on the type of instrument but rather on the instrument's acceptance by the market as suitable for trading or investment. However, the one formal requirement ("bearer or registered form") makes it easy for organizations (cooperatives, for example) to exempt themselves from the provisions of Article 8 by issuing papers evidencing non-transferable members rights and interests, if they so desire.

Another feature of Article 8 is an attempt to produce a set of rules that will speed up and simplify the registration of transfers of securities. Heretofore, substantial delays occurred in obtaining registration of transfers of securities in cases of decedents' estates, trusts, and similar situations. There has been widespread demand that some means be found to eliminate or reduce these time consuming, irritating, and expensive delays. Article 8 is said to provide a means of accomplishing this result.

Having established that investment securities of any type are negotiable instruments, Article 8 lays down appropriate rules for their transfer and for settlement of controversies arising out of theft, loss, forgery, and so on. The Article should be of major help to investors, traders, brokers, transfer agents, issuers, and others concerned with the sale and transfer of securities.

Article 9 - Secured Transactions; Sales of Accounts,
Contract Rights and Chattel Paper

Transactions in which debts are secured by interests in personal property, including chattel mortgages, pledges, conditional sales, trust receipts, assignments of accounts receivable, and the like, are covered by Article 9. The comprehensive scheme for the regulation of security interests in personal property and fixtures as set forth in the Code would amend, replace, or relocate most of the present Kansas statutes dealing with such security devices.

Traditional distinctions among security devices are not retained under Article 9. A single term, "security interest," would be substituted for the variety of terms now used in Kansas. Other descriptive terms would be changed. The property subject to a security interest would be the "collateral;" the creditor would be the "second party;" the interest in the collateral securing a debt would be a "security interest;" and the paper creating the security interest would be a "security agreement." The Code broadens the scope of present statutes to include certain "general intangibles," and all sales of accounts, chattel paper and contract rights, whether made for security or not. The present importance of the location of title to the collateral is minimized.

One major change is the Code's allowance of broad after-acquired property clauses and future advance clauses in security agreements, in contrast to the more limited approval under present Kansas statutes. The Code further permits the security interest to remain attached to collateral through all of its changing phases. It would moderate the present rule that a bona fide security transaction is void against general creditors if the secured party relaxes his control over the collateral in any manner. Security arrangements would not be void because the debtor has complete control over the collateral.

Formal requisites for security agreements would be reduced to a minimum under the Code, with the only requirements being a writing, signed by the debtor, containing a description of the collateral. The security interest would attach as soon as the agreement is signed, value given, and the debtor acquires rights in the collateral. The Code's filing procedure is simplified, with public notice generally given in the same manner and at the same places, regardless of the type or form of financing. Under some circumstances, the Code allows

a ten-day grace period for filing during which the secured party could file, and the filing would relate back. Present Kansas statutes provide no grace periods. The only filing required under the Code is a financing statement containing the signatures and addresses of both parties, and a description of the collateral by type or item. The simple notice required could be filed before or after the security interest attached. Renewal procedure would place greater emphasis on the maturity date expressed in the agreement.

Present Kansas rules regarding priorities of security interests would not be changed substantially. The Code, however, would make a material change in the law regulating the disposition of the collateral by the secured party. A secured party, under the Code, has broad discretion as to procedure, but every aspect of the disposition must conform with reasonable commercial practices among dealers in the kind of property being sold. The Code's effort is to get a better price for the benefit of all concerned by substituting business judgment for a formal sale procedure. The debtor is also protected by authorization either to force or restrain disposition of the collateral, under certain circumstances.

The Code, in establishing a comprehensive system for regulating all security devices, would unify conflicting statutes regulating chattel mortgages and conditional sales. For example, a chattel mortgage presently is to be recorded in the county in which the mortgager resides, except in the cases of growing crops and a mortgager residing outside of the state, whereas a conditional sales contract is to be recorded in the county where the property is kept. Further, a renewal affidavit is required for chattel mortgages, but recording of a conditional sales contract remains effective without renewal until the price is fully paid. In addition to simplifying present conflicting rules, the scope of existing legislation will be broadened by the Code to include nearly all transactions, regardless of their form, which are intended to create security interests in personal property.

Article 10 - Effective Date and Repealer

Article 10 consists of the sections which set the effective date of the act; provide for repeal of the uniform acts and the other specific laws replaced by the Code; and specify the laws not repealed under the Code. States which have adopted the Code generally have set the effective date from one to two years following adoption of the Code. The purpose of this practice is to allow ample time for those who will be affected by provisions of the Code to become familiar with any changes in practices and procedures which may be desirable or necessary under the Code.

QUESTIONS AND ANSWERS ABOUT THE
UNIFORM COMMERCIAL CODE

Further specific illustrations which present the underlying purposes of the Uniform Commercial Code have been prepared by the Kansas annotators in question and answer form.

1. What are the purposes of the Code?

The primary purposes of the Code are to simplify, clarify, and modernize commercial law and to make the law governing commercial transactions the same throughout the United States. For Kansas, the Code offers a practical solution to the problem of adapting Kansas law to the expanding needs of modern business.

2. What areas of commercial law are covered by the Code?

First, all of the familiar areas are covered: Sales of Goods, Negotiable Instruments, such as promissory notes, drafts and checks; Documents of Title, such as warehouse receipts and bills of lading; Investment Securities, such as stocks and bonds; and Secured Transactions, such as chattel mortgages and conditional sales. The Code also covers some of the less familiar areas: Bulk Transfers; Bank Deposits; Check Collections; Letters of Credit; and Sales of Accounts, Contract Rights and Chattel Paper.

3. It is stated that one of the primary purposes of the Code is to simplify, clarify, and modernize commercial law. What are some examples of the way in which the Code achieves this purpose?

A good example is in the sales area. For many years, courts have settled disputes between sellers and buyers by trying to determine who had the "title" to the goods at the crucial moment -- the seller or the buyer. The Code modifies this approach, the reasoning being that, in nine cases out of ten, the concept of title actually is meaningless since businessmen rely upon their own expectations rather than on the location of the "title." Under the Code, the rules are developed in accordance with what the buyer and seller might have reasonably expected in a given commercial situation. Rules are included for determining the location of title in the occasional situations in which that issue might arise.

4. Can other examples of simplification be given?

Two major illustrations might be cited. First, courts have had trouble since the turn of the century trying to fit corporate and municipal bonds

into the strict requirements of the Negotiable Instruments Law. There is clear evidence in these cases of a compelling urge to hold such bonds sufficiently negotiable for a bona fide purchaser to cut off title defects. The Code resolves this problem by removing bonds from the promissory note law (the NIL) and placing them with stock certificates and other investment instruments under the general heading of Investment Securities.

The second example is more far reaching. Many different kinds of security agreements are in use at the present time: chattel mortgages, conditional sale contracts, trust receipts, bailment leases, and the like. When used by the parties to create a security interest, they all have similar factual situations: the debtor is in possession of the goods and owing money while the creditor has an interest in the goods as security for the debt. Under pre-Code law, varying from state to state, the creditor may or may not have to record an interest in the collateral for the debt in a designated public office. If he has to record, there may be different recording statutes susceptible to different interpretations. Since the factual situation is the same, reason would suggest calling all security devices by the same name, "security agreement;" calling the creditor's interest a "security interest;" and leaving the "recording" statute with a single body of rules on the effect of recording or failure to record. This is what the Code does.

5. What examples can be given concerning the Code's purposes of "clarifying" and "modernizing" the law?

Actually, specific examples of modernization are difficult to single out. All of the Code falls into this category, including what has been described in previous questions. Sometimes the modernization is in the language such as substituting the modern word "draft" for the old word "bill of exchange." In other instances, the Code modernizes a large portion of the law, such as the part on check collections. In this area, it codifies present banking practices, but still leaves room for improvement by agreement or by Federal Reserve regulations.

Clarification, too, runs throughout the Code. Specific examples would include many areas of presently non-statutory commercial law where greater precision is needed than is provided through case law, such as specific definitions of commercial terms (F.O.B., F.A.S., and C.O.D.). Also clarified are many areas of statutory commercial law where courts have reached conflicting interpretation. For example, the Code selects between competing disagreements on the proper interpretation of the Negotiable Instruments Law.

SELECTED ANNOTATED BIBLIOGRAPHY

Listed below are a number of books and articles from law reviews and business publications which pertain to one or more aspects of the Uniform Commercial Code. Because of the continuing study of the Code in practically all states and the Code's importance to many groups of persons, literally hundreds of articles are available concerning the scope, purposes, advantages, and suggested improvements in the Code. The following publications, therefore, were selected as a sample of what is being written about the Code. Both pro and con opinions are included. Some of the publications are not available in general circulation throughout the state, but may be obtained on a loan basis from the Kansas State Law Library, State House, Topeka.

Barret, J.C., "Scope, Purposes and Function of the Code," Arkansas Law Review, Vol. 16, p. 1 (1961). A lengthy article (189 pages) dealing with each section of the Code and also illustrating forms of various types.

Beutel, F.K., "The Proposed Uniform (?) Commercial Code Should Not be Adopted," Yale Law Journal, Vol. 61, p. 334 (1952). One of the few printed attacks on the Code. For rebuttal see: Gilmore, "The Uniform Commercial Code: A Reply to Professor Beutel," Yale Law Journal, Vol. 61, p. 364 (1952).

Bunn, C., "Bank Collections under the Uniform Commercial Code," Wisconsin Law Review, Vol. 1964, p. 278 (1964). An article discussing Articles 3 and 4 of the Code as they pertain to bank collections and the bank's multiple identity as drawee, payor, and collection agent.

Bunn, C., "Financing Farmers, Existing Kansas Law and the Uniform Commercial Code," Kansas Law Review, Vol. 2, p. 225 (1954). A statement of major changes which the U.C.C. would make in some of the chief vehicles of secured farm financing other than mortgages on land.

Coogan, P.F., "Intangibles as Collateral under the Uniform Commercial Code," Harvard Law Review, Vol. 77, p. 997 (1964). A discussion of Article 9 of the Code in the practical context provided by the laws of New York and California, and the difficulties which stem from a lack of awareness of the importance of general intangibles in secured transactions.

Coogan, P.F., "The Lazy Lawyer's Guide to Secured Transactions under the Code," Banking Law Journal, Vol. 80, p. 195 (1963). A brief picture or cross-section of Article 9 of the Code.

Folk, E.L. III, "Some Problems under Article 8 of the Uniform Commercial Code," Arizona Law Review, Vol. 5, p. 193 (1964). An article concerned with the Code's concept of negotiability and security (and other related items) within the framework of creditor and equity interests.

Foster, R.W., "The Proposed Uniform Commercial Code: A New Bottle for Old and New Wines," South Carolina Law Quarterly, Vol. 15, p. 623 (1963). A general summary of the Code with discussion of its major innovations.

Funk, C.W., Banks and the Uniform Commercial Code (2nd Ed. 1964) Philadelphia Clearing House Association and Pennsylvania Bankers Association. An excellent book discussing all aspects of the Code relating to the practices of banking.

Iowa Law Review, Vol. 49, p. 1269 (1964), "Secured Interests in Growing and Future-Growing Crops under the Uniform Commercial Code." A note considering some of the problems connected with securing an interest in a growing or future-growing crop, and focusing on the pre-Code law relating to secured interests in crops as compared with the Code's provisions for such interests.

Kripke, H., "Fixtures under the Uniform Commercial Code," Columbia Law Review, Vol. 1964, p. 278 (1964). This article deals with ex-chattels as fixtures and correlative problems centering around sections 9-313 and 9-401 of the Code.

Lasswell, G.D., "Sales Article of the Uniform Commercial Code," Journal of the Bar Association of the State of Kansas, Vol. XXII, p. 152 (August 1953). A review of Article 2 - Sales and the changes that it would present in Kansas.

Malcolm, W.D., "The Uniform Commercial Code in the United States," International & Comparative Law Quarterly, Vol. 12, p. 226 (1963). An article describing the Code's general objectives, history, and content.

Meek, H.E., "Secured Transactions under the Uniform Commercial Code," Arkansas Law Review, Vol. 18, p. 30 (1964). This article deals specifically with the individual categories within the scope of Article 9.

Peters, E.A., "Remedies for Breach of Contracts Relating to the Sale of Goods under the Uniform Commercial Code: A Road Map for Article Two," Yale Law Journal, Vol. 73, p. 199 (1963). An in-depth study of Article 2.

Shanker, M.G., "An Integrated Financing System for Purchase Money Collateral: A Proposed Solution to the Fixtures Problem under Section 9-313 of the Uniform Commercial Code," Yale Law Journal, Vol. 73, p. 788 (1964). This article discusses the apparent policy behind section 9-313 and offers a revised section in substitute for the current section.

Tisdale, R.C., "Impact of the Uniform Commercial Code on the Law of Contracts," North Dakota Law Review, Vol. 39, p. 7 (1963). A study of the specific sections of Article 2 relating to the law of contracts.

Uniform Commercial Code - 1962 Official Text and Report No. 1 of the Permanent Editorial Board for the Uniform Commercial Code (Including the 1962 Official Recommendations for the Amendment of the Code). The American Law Institute, National Conference of Commissioners on Uniform State Laws (1962).

Uniform Commercial Code Handbook, Section of Corporation, Banking and Business Law, American Bar Association (1964). An extensive compilation of articles and notes concerning every Article of the Code. The book covers a number of major issues in detail.

Verlin, J.R., "Contract Draftsmanship under Article Two of the Uniform Commercial Code," University of Pennsylvania Law Review, Vol. 112, p. 564 (1964). This article deals at length with the Code's effect upon contract law.

Willier, W.F. and Hart, F.M., Forms and Procedures Under The U.C.C., Matthew Bender & Company (1964). A comprehensive study of the practical meaning of each section of the Code and complete forms for every situation.

Warren, W.D., "Cutting Off Claims of Ownership under the Uniform Commercial Code," University of Chicago Law Review, Vol. 30, p. 469 (1963). An analysis of the pre-Code cases in this area, and the effect of the Code upon them.

Williston, Samuel, "The Law of Sales in the Proposed Uniform Commercial Code," Harvard Law Review, Vol. 63, p. 561 (1950). An early article adverse to the Code, which discusses Article 2 section by section, commenting principally on the phraseology and the changes in existing law.