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THE UNIFORM COMMERCIAL CODE

FOREWORD AND DISCUSSION OF ARTICLE 1, GENERAL PROVISIONS

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In 1953 and 1954 when the Uniform Commercial Code had been enacted only in Pennsylvania and was under study in Ohio, the Ohio State Law Journal published a series of articles on the Code.¹ Since that time thirteen additional states, including Ohio, have adopted the Code.² Elsewhere, the Code is under serious study in all but seven states. To revisit the Code, then, in a second symposium with a different stress is fitting. Whereas the former series of articles was designed to inform the reader critically, this series is designed to inform him operationally, particularly from the point of view of Ohio law. Each of the nine articles in this series will discuss the scope and coverage of an article of the Uniform Commercial Code, its impact on the law of Ohio both in terms of similarities and differences between

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¹ Beutel, "The Proposed Uniform (?) Commercial Code Should not Be Adopted in Ohio," 14 Ohio St. L.J. 3 (1953); Andrews, "Should Article 3 of the Uniform Commercial Code Be Adopted in Ohio?," 14 Ohio St. L.J. 33 (1953); Walker, "Uniform Commercial Code Article 8—Investment Securities," 14 Ohio State L.J. 57 (1953); Freedheim and Goldston, "Article 9 and Security Interests in Accounts, Contract Rights and Chattel Paper," 14 Ohio State Law Journal 69 (1953); Schnader, "Why the Uniform Commercial Code Should Be Adopted in Ohio," 15 Ohio St. L.J. 3 (1954); Lattin, "The Law of Sales in the Uniform Commercial Code," 15 Ohio St. Law Journal 12 (1954); Griffiths, "Bank Deposits and Collections," 15 Ohio St. L.J. 24 (1954); Dougan and Calkins, "Documentary Letters of Credit," 15 Ohio St. L.J. 33 (1954); Folkert, "Sales in Bulk," 15 Ohio St. L.J. 43 (1954); Freedheim and Goldston, "Article 9 and Security Interest in Instruments, Documents of Title and Goods," 15 Ohio St. L.J. 51 (1954).

² The fourteen states which have adopted the Code, with effective date, are: Arkansas (December 31, 1961, Midnight); Connecticut (October 1, 1961); Illinois (July 1, 1962); Kentucky (July 1, 1960); Massachusetts (October 1, 1958); New Hampshire (July 1, 1961); New Jersey (January 1, 1963); New Mexico (December 31, 1961, Midnight); Ohio (July 1, 1962); Oklahoma (December 31, 1962, Midnight); Oregon (September 1, 1963); Pennsylvania (July 1, 1954); Rhode Island (January 2, 1962); and Wyoming (January 1, 1962).

the Code and the prior law, the likely reaction of the courts to the principal changes in the law, and the effect of the Code on the workaday practice of the lawyer. In addition to commenting on Ohio Revised Code Chapter 1301 (UCC Article 1, General Provisions) this article will discuss briefly the legislative background of the Code in Ohio and elsewhere.

LEGISLATIVE HISTORY

A review of legal periodical literature prior to the publication of the Uniform Commercial Code reveals several interesting cross currents of thought. In 1926, a New York lawyer, editorializing on "The Uniform Law Craze," expressed the hope that the American Bar Association would restrain its "imbecile boy" (The Conference of Commissioners on Uniform Laws) and imprecated further, "May the time come soon for the atmosphere will be clearer when the uniformity fad is safely behind us."³ Somehow, this lawyer thought, uniform laws were an attack on decentralized government and an impairment of states rights. On the other hand, Professor Ralph S. Bauer in 1929 wrote a convincing article advocating the consolidation of the six principal commercial uniform laws as a highly desirable and feasible goal, though not a simple one.⁴ In 1933, another New York lawyer analyzed and criticized the status of the definition of "value" in that state's commercial statutes.⁵ In 1947, even while the Code was being drafted, another law review published a comment which examined various possibilities of federal action designed to bring about unification, simplification, and clarification in the field of commercial law by federal enactment, from the point of view of constitutional powers and problems of judicial administration.⁶

One reason given for the adoption of a modernized body of commercial law was that it was necessary to forestall federal regulation of the field. In fact, the Merchants Association of New York had gone so far as to prepare a Federal Sales Act and had introduced it in Congress.⁷ Other reasons for the Code are more frequently cited: (1) the existing uniform acts of a commercial nature were obsolete and no longer appropriate in view of modern business practices; (2)

³ Hemphill, 60 Am. L. Rev. 312, 316 (1926).

⁴ Bauer, "Desirability of Consolidating the Uniform Commercial Statutes," 77 U. Pa. L. Rev. 467 (1929).

⁵ Kennedy, "'Value'—A Plea for Uniformity in New York Commercial Law," 8 St. John's L. Rev. 1 (1933).

⁶ Johnson, "Constitutional Law—A Federal Commercial Code—Some Possibilities Under the Constitution," 45 Mich. L. Rev. 1021 (1947).

⁷ Beers, J. Am. Jud. Soc'y 107, 108 (1948); Garrett, "The Project of the Formulation by the American Law Institute of a Commercial Code," 19 Fla. L.J. 35 (1945).

the interstate character of business transactions requires uniform, integrated laws; (3) there were serious omissions in the original acts (*e.g.*, absence of provisions in the Uniform Negotiable Instruments Law concerning "stop payment" of checks); (4) lack of integration of the separate commercial acts which were adopted in relative isolation of one another; (5) divergent constructions of some provisions of the uniform acts by courts in different states; (6) key amendments to certain uniform acts were adopted in some states but not in others, suggesting that it may be less difficult to convince a state legislature to adopt an entire commercial act than to amend an existing one. Faced with the choice of endeavoring to patch the worn garment comprising six principal commercial acts or passing a new body of laws, the proponents wisely chose the latter alternative.

In 1940, at the fiftieth annual meeting of the National Conference of Commissioners on Uniform Laws, a proposal to prepare a Uniform Commercial Code was adopted. In 1941, the American Law Institute was invited to make the project a joint undertaking. The American Law Institute was then nearing the end of its drafting of the Restatements of the Law. Work on the Code as such was begun in 1945, and the original edition of the Code was published in 1952.⁸ The editorial board responsible for the 1952 draft was under the Chairmanship of United States Circuit Judge Herbert F. Goodrich of Philadelphia. Other members at various times were the late Professor Karl N. Llewellyn (of Columbia and the University of Chicago Law Schools), William A. Schnader, a practicing attorney and First Vice President of the American Law Institute, and three practitioners, Walter D. Malcolm of Boston, John C. Pryor of Burlington, Iowa, and Harrison Tweed of New York. Professor Llewellyn was also Chief Reporter, and Professor Soia Mentschikoff (Mrs. Karl N. Llewellyn) was Associate Chief Reporter. A distinguished group of jurists, practitioners, and law school teachers served either as commissioners, or on the councils of the sponsoring agencies, or as draftsmen or advisors.⁹ Probably no enactment since the adoption of the federal Constitution has received so much study from so many and so distinguished a group of legal scholars and specialists as has the Uniform Commercial Code.

Following the promulgation of the Code in 1952, Pennsylvania

⁸ The lack of funds prevented the undertaking of the Code as such initially. Therefore, both groups undertook the drafting of the Revised Uniform Sales Act in 1942. Two foundations provided the necessary funds in 1944 and 1945 and work was then begun. See Schnader, "The New Commercial Code: Modernizing Our Uniform Commercial Acts," 36 A.B.A.J. 179 (1950).

⁹ For a complete list of persons involved in the preparation of the Code see Comment to Title, Uniform Commercial Code 1958 Official Text, 5-9.

enacted the Code by the unanimous vote of its legislature. In 1954, the New York Commission on State Laws conducted an amazingly detailed investigation of the Code in terms of brief, memoranda and oral testimony on the part of proponents, opponents, and scholars employed by the commission for independent judgment.¹⁰ The result was a detailed section by section criticism of the Code. Based on the report of the New York Commissioners and criticism by others, the Editorial Board was reactivated and the Code, as amended, appeared under the title of "1957 Official Edition." Thereafter, Massachusetts in 1957 and Kentucky in 1958 adopted the act. In 1958, the National Conference finally approved an act known as the Uniform Act for the Simplification of Fiduciary Security Transfers which affected the provisions of article 8 (investment securities). Further, certain inadvertent errors had crept into article 9 (secured transactions). Therefore, a 1958 official edition was published to reflect these changes and corrections. The edition adopted by Ohio is the 1958 official text subject to slight modifications which will be discussed hereinafter.

In Ohio, the Ohio State Bar Association through its Banking and Commercial Law Committee under the chairmanship of Attorney Robert P. Goldman of Cincinnati studied the Code for over ten years. That committee was instrumental in having the Ohio General Assembly pass a resolution in 1955 calling for a study of the Code. The results of that study are embodied in a publication entitled "Ohio Annotations to the Uniform Commercial Code."¹¹ In 1958, the Council of Delegates of the Ohio State Bar Association, on the recommendation of the Banking and Commercial Law Committee, recommended the enactment of the Code. During the many years that the Code was under study in Ohio, no significant opposition within the Ohio State Bar Association developed.

During the 103rd General Assembly, Mr. Boris Auerbach, a member of the staff of the Ohio State Bar Association and formerly Research Attorney for the Ohio Legislative Service Commission, led the campaign for the adoption of the Code. Because of the novelty of the Code and the fact that it was not widely adopted, the proponents had no particular reason to be sanguine about an early passage. The Ohio Bankers Association actively opposed the Code. Their opposition was based primarily on the novelty of the act, particularly with regard to the system of chattel security in article 9. They suggested that opportunity should be provided to examine the experience

¹⁰ The Report of the Law Revision Commission and Record of Hearings on the Uniform Commercial Code, State of New York, appear in seven printed volumes for the period of 1954-1956. These elaborate hearings contain a wealth of research material.

¹¹ Ohio Legislative Service Commission Information Bulletin No. 1958-1 (1960).

in Massachusetts (particularly as to banking) and that the people of Ohio should have time to become familiar with the Code. Since the Code affects the savings and loan industry only tangentially, the Ohio Savings and Loan League entered only token opposition, based largely on the novelty of the act. Perhaps the sentiments of the opponents may best be summarized by several lines from Alexander Pope:

Be not the first by whom the new are tried,
Nor yet the last to lay the old aside.

The Code passed the House by a vote of 76 to 49 in 1959 and was subsequently recommended for passage by a unanimous vote of the Senate Judiciary Committee. The action by that committee was, however, only two weeks from adjournment, and in the pressure of last minute business, the bill could not be brought up for a vote on the Senate floor. But the course was clear—the bill was destined for passage by the 104th General Assembly.

In the 104th General Assembly, the Code had the full support of the Ohio Bankers Association (who were favorably impressed by the experience in Massachusetts), the Ohio Chamber of Commerce, the State Legislative Committee of the National Association of Credit Managers, and of course, the Ohio State Bar Association, and the Ohio Commission on Uniform State Laws. The vote on the floor of the Senate was unanimous and in the House overwhelming (114 for, 17 against). Thus, the effective campaign by the Ohio State Bar Association and the failure of any substantial opposition to materialize in the 104th General Assembly resulted in the early passage of the act. The Ohio legislature in this instance at least did not choose to follow Pope's admonition of conservatism.

No treatment of the history of the Code would be complete without a notation of the criticisms. The criticisms of the New York Legislative Commission on State Laws based in part on policy grounds and in part on terminology in the Code have been referred to heretofore. However, virtually all of the criticisms were removed by the 1957 revision. Probably the most vigorous critic among legal educators has been Professor Frederick K. Beutel¹² whose main objections may be summarized as follows: the Code is a grandiose experiment, it is not artfully drawn, the language is erratic, the act was drawn by lawyers representing large corporations and the interest of the consumer and the laborer were not represented, article 4 (banks

¹² "The Proposed Uniform (?) Commercial Code Should not Be Adopted in Ohio," 14 Ohio St. L.J. 3 (1953); "The Proposed Uniform Commercial Code as a Problem in Codification," 16 Law and Contemp. Prob. 141 (1951); "The Proposed Uniform (?) Commercial Code Should not Be Adopted," 61 Yale L.J. 334 (1952).

and banking) is vicious, and article 9 (secured transactions) institutes radical changes in the law.

GENERAL PROVISIONS—RULES OF CONSTRUCTION

Chapter 1301 of the Ohio Revised Code (UCC Article 1) comprises matters generally applicable through the enactment, such as rules of construction, territorial applicability, a general statute of frauds provision, definitions, and particular elements such as good faith, time, dealings and usages, and reservation of rights. Omitted from the Ohio version of article 1 are three sections that appear in the 1958 Official Text of the Uniform Commercial Code: those entitled "Short Title," "Severability," and "Section Captions."¹³ Beginning with the Code revision in 1953, short titles no longer appear as part of Ohio statutes. The omission of the severability provision is inconsequential since a blanket severability provision appears elsewhere in the Ohio Revised Code.¹⁴ Section captions are supplied by the Ohio Legislative Service Commission for referencing and indexing purposes and are not a part of the statutory law of Ohio. The omission from the Ohio version of the Code that "Section captions are parts of this Act"¹⁵ is consistent with Ohio legislative policy but denies section captions the weight in statutory interpretation that the Commissioners intended.¹⁶

Ohio Revised Code section 1301.02 contains a statement of the purposes of the Code. This statement goes beyond the mere end of uniformity as set out in four prior uniform acts and expresses two related and fundamental policies: (1) that the Code be *liberally* construed to effectuate its underlying purposes of simplification, modernization, growth, and uniformity of the law governing commercial transactions; (2) recognition of the principal of freedom of contract, itself a factor of evolutionary growth within the limits set by the Code.

As to the first statement of policy, a reading of the official comments to this section leaves no doubt as to the propriety of an expansion of the Code by analogy or extrapolation. This is evident from the favorable citation of precedents wherein prior commercial acts extended by analogy, and by the comment that "Nothing in this Act stands in the way of continuance of such action by the courts."¹⁷

¹³ UCC §§ 1-101, 1-103, and 1-109.

¹⁴ Ohio Rev. Code § 1.13.

¹⁵ UCC § 1-109.

¹⁶ See generally, 37 Ohio Jur. 2d *Statutes* § 263 (1959) on the weight to be accorded chapter or subdivision headings.

¹⁷ UCC § 1-102, comment 1.

As to the second policy of the Code, evolution of commercial law by freedom of contract, the *meaning* of the Code may not be varied by agreement, but the *effect* of the enactment may be varied by agreement within limits set by the Code.¹⁸ These limitations include: (1) specific sections, which, with varying degrees of explicitness, may preclude variation of their effect¹⁹; (2) the general exception that obligations of good faith, diligence, and reasonable care may not be disclaimed by agreement. However, the parties are given considerable freedom in their ability to determine standards by which the performance of such obligations are to be measured²⁰; (3) the power of courts to police a contract in whole or in part by finding it unconscionable at the time it was made²¹; (4) applicable supplementary general principles of law that have not been displaced by the Code.²²

A supplementary rule of construction against implied repeal of the Code by subsequent legislation is set forth.²³ This principle is consistent with existing Ohio law.²⁴ The official comments stress that the Code is particularly resistant to repeal by implication.²⁵

TERRITORIAL APPLICABILITY

Unlike the uniform acts that it replaces, the Code contains a section governing the territorial applicability or conflict of laws guides. The specific, detailed, and comprehensive coverage of the original edition of the Code was rejected by the Commissioners after much criticism by others.²⁶ The Commissioners did not, as suggested by some, eliminate the general provisions pertaining to conflict of laws rules, but settled upon these principles:²⁷ subject to certain exceptions requiring the application of local law found elsewhere in the Code,²⁸ the parties may agree on the choice of applicable law in terms of this state (*i.e.*, the Code) or the laws of some foreign state or nation, provided the transaction bears a "reasonable relation" to such

¹⁸ Ohio Rev. Code § 1301.02(C) (UCC § 1-102(3)).

¹⁹ Ohio Rev. Code § 1301.02(C) (UCC § 1-102(3)).

²⁰ Ohio Rev. Code § 1301.02(C) (UCC § 1-102(3)).

²¹ Ohio Rev. Code § 1302.15 (UCC § 2-302).

²² Ohio Rev. Code § 1301.03 (UCC § 1-103).

²³ Ohio Rev. Code § 1301.04 (UCC § 1-104).

²⁴ *Village of Leipsic et. al. v. Wagner*, 105 Ohio St. 466, 138 N.E. 863 (1922).

²⁵ UCC § 1-104, comment.

²⁶ Rheinstein, "Conflict of Laws in the Uniform Commercial Code," 16 *Law and Contemp. Prob.* 114 (1951); Caldwell, Jordan, Pugh, "Choice of Law Under the Uniform Commercial Code," 10 *La. L.R.* 278 (1950); Beutel, "The Proposed Uniform (?) Commercial Code Should not Be Adopted," 61 *Yale L.J.* 335, 351 (1952).

²⁷ Ohio Rev. Code § 1301.05 (UCC § 1-105).

²⁸ Ohio Rev. Code § 1301.05(B) sets out the exceptions.

state or nation; in the absence of such an agreement, and subject to the same exceptions, the Code applies to transactions bearing an "appropriate relation" to this state.

The Code, by permitting the parties to stipulate in advance the law which they intend to govern their transaction recognizes the doctrine of "party autonomy," but also places a limitation on that doctrine. Ordinarily the law chosen must be that of jurisdiction where a significant enough portion of the making or performance of the contract occurs to make the choice reasonable, *i.e.*, the contract must have a substantial footing in that jurisdiction. Yet the official comments qualify this statement somewhat by the following statement: "But an agreement as to choice of law may sometime 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 contract with the jurisdiction."²⁹ Thus, a reasonable relation includes instances wherein a significant enough portion of making or performance of the contract occurs or is to occur in the jurisdiction selected to make the choice effective. But it may include instances when the contract has no significant contact with the jurisdiction—unfortunately the comments neither explain nor illustrate such instances.

In the absence of an agreement between the parties (and perhaps in the case of an ineffective choice by the parties), the Ohio courts are authorized to apply the Code if the transaction bears an "appropriate relationship" to this state. Inappropriateness is illustrated by the comments in these instances:³⁰ (1) the mere fact that the suit is brought in Ohio; (2) where the parties have effectively contracted on the basis of some other law; (3) where the law of the place of contract and the law of the place of contemplated performance are the same and are contrary to the law under the Code. Appropriateness is to be determined not strictly by application of precedents established in other contexts but where it is justified by its comprehensiveness, by the policy of uniformity, and by the fact that it is in large part a reformulation and restatement of the law merchant and of the understanding of the business community which transcend state and even national boundaries. Favorable reference is made in the official comments³¹ to *Global Commerce Corporation v. Clark-Babbitt Industries*³² which contains the following panoply of rules (as

²⁹ UCC § 1-105, comment 1.

³⁰ UCC § 1-105, comment 2.

³¹ UCC § 1-105, comment 3.

³² 239 F.2d 716, 719 (2d Cir. 1956). The quoted material is from *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954).

to the determination of the validity of contracts in multi-state transactions):

(1) what is the center of gravity of the facts, or (2) which jurisdiction has the most significant contacts with the matter in dispute, or (3) which is "most intimately concerned with the outcome of the particular litigation," or (4) whether one rule or another produces the best practical result.

What constitutes an "appropriate relation" and whether the statute will be construed narrowly in terms of endeavoring to apply existing precedents, or broadly, in terms of the spirit of this section (to apply the Code to multi-state transactions whenever possible within constitutional limitations)³³ is left to the Ohio courts to decide. In the absence of finding an appropriate relation within the meaning of this section, the Ohio courts are free to apply the common law choice of law rules.

FORMALITIES: STATUTE OF FRAUDS

Contracts for the sale of kinds of personal property not regulated by specific statute of frauds provisions elsewhere in the Code³⁴ are governed by Ohio Revised Code section 1301.09, a section referred to in the comments as a "gap-filling" section. Principally, this provision is aimed at the sale of general intangibles (*e.g.*, bilateral contractual rights and royalty rights) which are not subject to the statute of frauds in article 2 (sales)³⁵ and certain other intangibles which by their nature have nothing to do with commercial financing transactions (*e.g.*, sale of accounts, chattel paper as a part of a sale of business, and rights represented by judgment) and are, therefore, omitted from the frauds provision in article 9 (secured transactions).³⁶

The minimum requirements of this section are that there be some writing which indicates that a contract of sale has been made at a defined or state price, that there is a reasonable identification of the subject matter, and that it is signed by the party against whom enforcement is sought or by his authorized agent. This section fails to parallel the statute of frauds sections found elsewhere in the Code³⁷

³³ See Burton, "The Uniform Commercial Code and Conflict of Laws," 9 Am. J. Comp. L. 458, 470, note 61 (1960). Beggan and Kaelin, "Uniform Commercial Code—Commercial Paper Transactions Between Code and Non-Code States: A Problem of Applicable Law," 34 Notre Dame Law. 209 (1959); Braucher, "The Legislative History of the Uniform Commercial Code," 58 Colum. L. Rev. 798, 810-812 (1958).

³⁴ Ohio Rev. Code § 1302.04 (UCC § 2-206), § 1308.30 (UCC § 8-319) and § 1309.14 (UCC § 9-203).

³⁵ Ohio Rev. Code § 1302.04 (UCC § 2-206).

³⁶ Ohio Rev. Code § 1309.14 (UCC § 9-203).

³⁷ See statutes *supra*, note 34.

in that there is no expression concerning part performance, nor express recognition of the effect of an admission of the existence of an oral contract in the pleadings, or the evidence or otherwise in court by the opposing party.

This section provides in part:

Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing. . . .

This section appears to say that in the absence of a writing sufficient in form to comply with this section a contract for the sale of personal property (not covered by other frauds provisions in the Code) may be enforced as a claim or asserted as a defense up to five thousand dollars, irrespective of the face value of the contract. Such an interpretation assumes that the phrase, "beyond five thousand dollars in amount," refers simply to the damages claimed where the contract is sued upon affirmatively, and "beyond five thousand dollars . . . in value" refers to the use of the contract defensively, and that "beyond five thousand dollars in amount or value" does not immediately modify the words "contract for the sale of personal property" as it would if the statute read:

Except in the cases described in subsection (2) of this section a contract for the sale of personal property *beyond five thousand dollars in amount or value* is not enforceable. . . .

The latter interpretation is, however, more nearly consistent with the present approach to the statute of frauds that an entire contract subject to the statute of frauds is enforceable in its entirety or not at all³⁸ and the wording of the statute of frauds section in Uniform Sales Act³⁹ wherein the monetary limitation pertains to the face amount of the contract or the value of the property. The possibility of the latter interpretation is developed in a recent commentary.⁴⁰ Pending a definite interpretation, counsel will do well to suggest to their clients that contracts of the kinds governed by this section should be in writing where either the face value, or the damage value, or the

³⁸ *Obear—Nester Glass Co. v. Lax*, 11 F.2d 240 (8th Cir. 1926); *R. & L. Co. v. Metz*, 160 N.Y.S. 145, 175 App. Div. 276 (1916), *affirmed*, 114 N.E. 1082, 219 N.Y. 556 (1916).

³⁹ Uniform Sales Act § 4(1): "A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless"

⁴⁰ "The Uniform Commercial Code, Section 1-206—A New Departure in the Statute of Frauds?" 70 *Yale L.J.* 603 (1961).

defensive value of the contract does, or is likely to, exceed five thousand dollars.

OTHER PROVISIONS

Ohio Revised Code section 1301.01 defines forty-six terms applicable generally throughout the Code. Additional definitions are contained elsewhere in the introductory article.⁴¹ These definitions are subject to additional definitions contained in the introductory sections of each of the chapters that follow; hence, one must check in at least two places for definitions. In drafting an agreement subject to the Code the draftsman should keep in mind that many of the definitions are new⁴² or expanded,⁴³ and that many pedestrian terms previously undefined in the uniform acts are now defined by the Code, *e.g.*, aggrieved party, contract, creditor, notice, and party. It will behoove the draftsman to check his use of language against the Code to avoid incongruity. Certain language is deliberately not defined; *e.g.*, "unconscionable" with reference to unconscionable contracts,⁴⁴ and "appropriate relation" and "reasonable relation" with regard to territorial applicability.⁴⁵

Subject to the underlying requirement of good faith, renunciation or waiver of rights or claims arising out of an *alleged* breach of a commercial contract may be effectuated without consideration, where such renunciation or waiver is in writing and signed and is delivered to the aggrieved party.⁴⁶ Oral renunciation with consideration is not precluded, subject to the requirements of the statute of frauds concerning the formalities in the modification of contracts within its purview and the provisions concerning the formalities of modification, rescission, and waiver of contracts within the sales chapter.⁴⁷

A basic principle running throughout the Code is that of good

⁴¹ Ohio Revised Code §§ 1301.03 (UCC § 1-202), 1301.10 (UCC § 1-204) and § 1301.11 (UCC § 1-205).

⁴² The Ohio Legislative Service Commission Notes lists as "new" or as having no counter part in present statutes: aggrieved party, agreement, airbill, branch, burden of establishing a fact, conspicuous, contract, creditor, genuine, honor, insolvency proceedings, money, notice, notifies or gives notice, party, remedy, representative rights, security interest, send, signed, surety, telegram, term, unauthorized signature or endorsement, value, and warehouse receipt.

⁴³ The Ohio Legislative Service Commission Notes list as expanded definitions, with reference to prior Ohio law: action, bearer, bill of lading, buying, holder, purchase, purchaser, and writing.

⁴⁴ Ohio Rev. Code § 1302.15 (UCC § 2-302).

⁴⁵ Ohio Rev. Code § 1301.05 (UCC § 1-105).

⁴⁶ Ohio Rev. Code § 1301.07 (UCC § 1-107).

⁴⁷ UCC § 1-107 comment.

faith: "Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement."⁴⁸ Thus, *enforcement* as well as the performance of the contract, and *duties* as well as contracts within the Code, are subject to the good faith requirement. The general definition of "good faith" defines the term simply as "honesty in fact in the conduct or transaction concerned"⁴⁹ and makes no reference to the inclusion of reasonable commercial standards or "commercial decency" as a test of good faith. However, honesty in fact and observance of reasonable commercial standards are conjoined in the case of merchants under the sales chapter⁵⁰ and in several other specific situations in the Code.⁵¹

Good faith limits the power to accelerate payment or performance or to require security or additional security "at will" of agreements or of paper which is in the first instance payable at a later date.⁵² Good faith in this context means an honest belief that the prospect of payment or performance is impaired. The burden of proof is on the party against whom the power has been exercised to establish the lack of good faith. Acceleration provisions do not affect negotiability⁵³ and the section is not applicable to demand paper by its terms. One author suggests the purpose of this section is to create written evidence of a bona fide reason for the holder's action, where such writing is not outweighed by other factors.⁵⁴

IN CONCLUSION

The Code, by its very bulk, seems to present a Herculean obstacle to knowledgeability, if not mastery, of the new. However, a principal architect of the Code, the late Professor Karl N. Llewellyn, provided assurance that "Never in American History has any statute, much less as large a one as the Code, been presented to the bench, bar, and public in a form so easy and so safe for any man to use."⁵⁵

⁴⁸ Ohio Rev. Code § 1301.09 (UCC § 1-203).

⁴⁹ Ohio Rev. Code § 1301.01(S). In the context of the general definition the test of good faith is said to be subjective: Braucher, *op. cit. supra*, note 33, at 812.

⁵⁰ Ohio Rev. Code § 1302.01(2) (UCC § 2-103(1)(b)).

⁵¹ Ohio Rev. Code §§ 1303.42 (UCC § 3-406), 1303.55C (UCC § 3-419(3)), 1307.28 (UCC § 7-404), 1309.28 (UCC § 8-318). See also Ohio Rev. Code §§ 1303.31(C)(3) (UCC § 3-302(3)(C)) and 1307.29(D) (UCC § 7-501(4)).

⁵² Ohio Rev. Code § 1301.14 (UCC § 1-208).

⁵³ Ohio Rev. Code §§ 1303.08(3) (UCC § 3-106(C)) and 1303.11(3) (UCC § 3-112(C)).

⁵⁴ 1 Anderson's Uniform Commercial Code 53 (1961).

⁵⁵ 1 Report of the Law Revision Commission for 1954 and record of Hearings on the Uniform Commercial Code, State of New York 17 (1954).