

DOCUMENTS OF TITLE—ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE

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INTRODUCTION

Article 7 of the Uniform Commercial Code (Revised Code sections 1307.01-40) deals with business documents which represent commodities that are being stored or transported. These documents are defined in Ohio Revised Code section 1301.01(0) (UCC § 1-201(15)) as follows:

“Document of title” includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.

These “documents of title” which represent commodities should be distinguished from “commercial paper” which represents money (drafts, checks, certificates of deposit, and notes) covered by article 3 (Revised Code sections 1303.01-.78) and should also be distinguished from “investment securities” which represent invested capital (bonds, debentures, and stock) covered by article 8 (Revised Code sections 1308.01-.36). For most purposes of Ohio lawyers, then, article 7 is the law of warehouse receipts and bills of lading, the two documents most frequently issued by Ohio commercial bailees to evidence an interest in goods.

COVERAGE OF ARTICLE 7

Article 7 is essentially a compilation of the present uniform laws relating to (a) the duties and liabilities of bailees under documents of title, (b) bailees’ liens, and (c) negotiation and transfer of documents of title. Most of the changes in the language of the existing law, to be discussed hereinafter, are clarifications rather than revisions. Therefore, the coverage of article 7 is basically similar to the present coverage of the Uniform Bills of Lading Act (Revised Code sections 4965.01-99, repealed effective July 1, 1962) which was promulgated

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by the National Conference of Commissioners on Uniform State Laws in 1909 and adopted in Ohio in 1911, the Uniform Warehouse Receipts Act (Revised Code section 1323.01-.99, repealed effective July 1, 1962) promulgated in 1906 and adopted in Ohio in 1908, and some provisions dealing with negotiation of documents of title in the Uniform Sales Act (Revised Code sections 1315.01-76, repealed effective July 1, 1962) promulgated in 1906 and adopted in Ohio in 1908. By coordinating these three separate clusters of law relating to commercially bailed commodities, article 7 recognizes the intimate interrelation of the warehousing and transportation industries and eliminates various technical inconsistencies and repetitions in the law of warehouse receipts and bills of lading. Almost the only omission in article 7 from the present Ohio bills of lading and warehouse receipts acts is the criminal sections (Revised Code sections 1323.51-.57 and sections 4965.43-.49, repealed effective July 1, 1962) which are seldom employed because the offenses covered therein are generally encompassed by offenses in the general criminal code such as embezzlement by a carrier, warehouseman or consignor (Revised Code section 2907.37) and conversion of property by a bailee (Revised Code section 2907.39).

Neither the old Ohio law nor the new article 7 covers interstate transactions or foreign exports. These transactions are governed by federal statutes and treaties,¹ and until the United States Congress adopts the Code there will be a lack of uniformity between intrastate and interstate rules on bills of lading and warehouse receipts.² Further, the areas of regulatory law controlled by the Public Utility Commission of Ohio are not displaced by the Code.³ On the other hand, the Code does extend beyond the existing Ohio warehouse receipts act by eliminating the requirement that the issuing warehouseman be "lawfully engaged" in business, and by including cooperative and state-operated warehouses within the definition of warehouseman.⁴ In ad-

¹ Ohio Rev. Code § 1307.03 (UCC § 7-103). See Braucher, Documents of Title, American Law Institute 3-4 (1958).

² See Braucher, "Federal Enactment of the Uniform Commercial Code," 16 Law & Contemp. Prob. 100 (1951).

³ Ohio Rev. Code § 1307.03 (UCC § 7-103) (Supp. 1962) makes article 7 subject to "any . . . regulatory statute of this state or tariff, classification, or regulation filed or issued pursuant thereto."

⁴ UCC § 7-102 Comment 2. Compare Ohio Rev. Code § 1307.01(A)(8) (UCC § 7-102(1)(h)) (1961) which defines the term "warehouseman" as "a person engaged in the business of storing goods for him [sic]" with Ohio Rev. Code § 1323.01(M) (1953) repealed effective July 1, 1962 (Uniform Warehouse Receipts Act § 58(1)) which is limited to persons "lawfully engaged in the business of storing goods for profit." A typographical error in section 1307.01(A)(8), noted above, substituted the word "him" for "hire."

dition, the conflict of laws rule stated in Revised Code section 1301.05 (UCC § 1-105) may apply Ohio law to documents of title issued elsewhere in some instances where previously the Ohio conflicts of law rule would have applied the law of the other state.⁵ In general, then, the new Code extends the applicability of the law only to a small degree. The importance of integrating, and at the same time modernizing the law of documents of title should not, however, be underestimated, and the law covered by article 7 should be generally familiar to lawyers with a commercial practice. Thus, even if article 7 is not novel, it is worthwhile for Ohio lawyers to review it in connection with its codification.

DUTIES AND LIABILITIES OF BAILEES

The two common types of bailee documents of title, warehouse receipts and bills of lading, typically serve the threefold purpose of receipts for goods delivered to the bailee, contracts for storage or carriage and documents of title. Article 7 requires that certain basic terms be included in warehouse receipts⁶ but does not provide similar requirements for bills of lading.

The required terms for warehouse receipts include the location of the warehouse, the date of issue of the receipt, a description of the goods, the rates for storage and handling, provisions relating to the warehouseman's lien, a description of the person to whom the goods will be delivered, and, finally, the warehouseman's signature.⁷ These required provisions, together with others which the warehouseman may elect to include in the receipt or in a tariff to which the receipt makes reference,⁸ constitute the receipt, the document of title, and the contract of storage. As such, they create the basis for the warehouseman's duties and possible liabilities. The typical warehouse receipt fits the required terms into the context of a standard storage and handling agreement which generally is printed on the back of the receipt and

⁵ See Braucher, *supra* note 1, at 8.

⁶ Ohio Rev. Code § 1307.07(B) (UCC § 7-202(2)).

⁷ Ohio Rev. Code § 1307.07(B) (UCC § 7-202(2)) provides that the warehouseman is liable for the damages caused to any person injured by the omission of one or more of the said terms prescribed to be included in warehouse receipts, but Ohio Rev. Code § 1307.25(1) (UCC § 7-401(a)) preserves the obligations imposed by article 7 upon the issuer of any document of title even though the document may not comply with the requirements of article 7 or of any other law or regulation regarding its issue, form or content.

⁸ Ohio Rev. Code § 1307.07(C) (UCC § 7-202(3)) states that a warehouseman may insert in his receipt, in addition to the required terms, any other terms not contrary to the UCC (as adopted in Ohio).

incorporated by a reference on the face of the receipt above the warehouseman's signature.⁹

Article 7 departs from the present Ohio uniform bills of lading act by not prescribing essential terms for bills of lading.¹⁰ No doubt this omission is attributable both to the careful regulation of bills of lading by state and federal commissions and to the fact that the Interstate Commerce Commission has approved a basic form of railroad bill of lading which is commonly used by motor and inland water carriers, as well as railroads, in both interstate and intrastate commerce.¹¹ This standard form of bill of lading follows the pattern of the warehouse receipt by placing certain basic provisions within the context of a standard contract of carriage thereby creating a receipt for the goods, a contract of carriage, and a document of title.¹²

Warehouse receipts and bills of lading are documents of title under the Code if they purport to cover identifiable goods in the warehouseman's or carrier's possession.¹³ As documents of title they are treated as the tangible evidence of the right to the goods during transportation or storage. Whether the goods can be sold or pledged by negotiating the bill or receipt depends upon the manner in which the bill or receipt describes the person to whom the goods are to be de-

⁹ The standard form of agreement was adopted by representatives of shippers, bankers, railwaymen and warehousemen in 1926 and was approved by the Department of Commerce during the same year. Typical forms of warehouse receipts are set forth in Braucher, *supra* note 1, at 129-139.

¹⁰ See Ohio Rev. Code § 4965.02 (1953) which has been repealed effective July 1, 1962.

¹¹ See Braucher, *supra* note 1, at 12 n. 10.

¹² Typical forms of bills of lading are set forth in Braucher, *supra* note 1, at 140-157 and 1 Fed. Carr. Rep. § 31.1-.7 (1959). However, a Straight Bill of Lading—Short Form was arrived at in 1949 after a conference between representatives of the Interstate Commerce Commission, the National Industrial Traffic League, the railroads and the motor carriers. The standard form of contract of carriage is not printed on the back of this type of bill of lading. Instead there is a reference on the face of the bill to existing freight classifications and tariffs. A letter dated April 12, 1949 from Commissioner Mitchell, of the Interstate Commerce Commission, to the National Industrial Traffic League stated that the Commission would not suspend proposed rules authorizing the use of the Straight Bill of Lading—Short Form. Consequently, carriers frequently issue this short form of bill of lading. Many warehousemen are also removing the standard storage and handling agreement from the backs of their receipts. However, since warehousemen cannot incorporate public classifications and tariffs into their receipts, they must exercise care in the use of short forms to be certain that the provisions regarding storage and handling are a part of the contracts created by their receipts.

¹³ Ohio Rev. Code § 1301.01(O) (UCC § 1-201(15)). The said sections also provide that a document is a "document of title" only if, "in the regular course of business or financing," it is "treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers," but the typical forms of warehouse receipts and bills of lading meet this standard.

livered.¹⁴ A negotiable document more fully symbolizes the goods since it must be surrendered in exchange for the goods.¹⁵ Moreover, due negotiation of the document (which, of course, cannot be accomplished with a nonnegotiable document) not only transfers title to the document and the goods, but also transfers the direct obligations of the bailee under the provisions of the document which evidence receipt of the goods and recite the contract of storage or carriage.¹⁶

Warehouse receipts and bills of lading will be regarded by lenders and others as effectively standing in place of the goods they cover only to the extent that the bailee is legally required to perform properly his duties under such documents. As a result, article 7 enhances commercial acceptance of warehouse receipts and bills of lading as documents of title by defining both the manner in which the bailee's duties are to be performed and the nature and extent of the bailee's liability in the event of improper performance. As concerns duties of carriers and warehousemen, article 7 requires the care which a "reasonably careful man would exercise under like circumstances" to prevent loss or injury to the goods,¹⁷ and the bailee's duty to deliver the goods is defined explicitly in article 7. Provided the bailee's lien has been satisfied and the document, if negotiable, has been either surrendered or submitted for notation of partial deliveries, the bailee must deliver the goods to the person entitled under the document unless the bailee can establish at least one of the seven defenses to his obligation to deliver which are set forth in Revised Code section 1307.27(A).¹⁸ Article 7 also covers the bailee's duty to obey or disregard changed instructions and provides a remedy for the bailee in the event of conflicting claims.¹⁹

The liability of the warehouseman or carrier under the combined receipt, contract and document of title which he issues is also established by article 7. The bailee may be liable even though he did not receive the goods which his document purports to cover.²⁰ "Reasonable provisions" may be inserted in bills of lading and warehouse receipts limiting the time and the manner in which claims may be

¹⁴ See Ohio Rev. Code § 1307.04 (UCC § 7-104).

¹⁵ Ohio Rev. Code § 1307.27(C) (UCC § 7-403(3)).

¹⁶ Ohio Rev. Code § 1307.30(A) (UCC § 7.502(1)).

¹⁷ Ohio Rev. Code § 1307.24(A) (UCC § 7-309(1)). Ohio Rev. Code § 1307.09(A) (UCC § 7-204(1)) (1961).

¹⁸ Ohio Rev. Code § 1307.27 (UCC § 7-403).

¹⁹ Ohio Rev. Code § 1307.18 (UCC § 7-303). Ohio Rev. Code § 1307.40 (UCC § 7-603).

²⁰ Ohio Rev. Code § 1307.08 (UCC § 7-203); Ohio Rev. Code § 1307.16(A) (UCC § 7-301(1)) (1961).

presented and actions instituted.²¹ Moreover, warehouse receipts and bills of lading may contain certain provisions limiting the amount of the bailee's liability in the event of loss of or damage to the goods.²²

The nature and enforcement of bailee's liens under article 7 and also the new and important provisions enabling warehousemen to terminate storage by notice when the period of storage is not expressly fixed by the document are considered in the comments below on the substantive changes from existing law.

Negotiation and Transfer

The provisions on negotiation and transfer of documents of title contained in article 7 are intended to promote the commercial acceptance of documents of title in order to facilitate speedy handling of commercial transactions. Article 7 thus provides that due negotiation of a negotiable document of title vests the holder with title to the document, title to the goods, all rights accruing under the law of agency or estoppel, and the direct obligation of the issuer according to the terms of the document.²³ In addition, a negotiable document of title is, in general, "duly negotiated" within the meaning of article 7 when there is a good faith purchase for value even though the sale of the document may be in bad faith.²⁴ This result is considered essential to the furtherance and protection of the regular course of business. However, the official comment points out that there is no purpose in protecting transactions that do not really further the regular course of trade.²⁵ As a result, a good faith purchase for value does not constitute due negotiation under article 7 if "it is established that the negotiation is not in the regular course of business or financing."²⁶ This limitation, according to the official comment, brings both the person negotiating the document, and the transaction in which it is negotiated, under scrutiny. For example, a transaction in which a

²¹ Ohio Rev. Code § 1307.09(C) (UCC § 7-204(3)); Ohio Rev. Code § 1307.24(C) (UCC § 7-309(3)). In deciding *United States Fidelity & Guaranty Co. v. Mooney's Moving and Storage Inc.*, 16 Pa. D. & C. 2d 668 (1958), the court held under the Uniform Commercial Code that a provision in a warehouse receipt requiring that claims be filed in writing within thirty days after notice of damage is mailed to the claimant at his last known address is not, as a matter of law (without proof to the contrary), such an unreasonable contractual limitation as to be against public policy.

²² See Ohio Rev. Code § 1307.09(B) (UCC § 7-204(2)) and Ohio Rev. Code § 1307.24(B) (UCC § 7-309(2)) which provide generally that damages may be limited provided the bailor has the right to increase the stated value of the goods thus increasing the amount which may be recovered as damages, but limitations of damages are ineffective against conversion by the bailee.

²³ *Supra* note 16.

²⁴ See Ohio Rev. Code § 1307.29(D) (UCC § 7-501(4)).

²⁵ UCC § 7-501 Comment 1.

²⁶ *Supra* note 24.

manufacturer negotiated a bill of lading to a bank might produce a different result from a transaction where a tramp negotiated a bill of lading to a wealthy speculator.²⁷

Article 7 also defines the precise circumstances under which the rights acquired by the purchaser of a duly negotiated document may be defeated.²⁸ In this regard, the rights of a holder of a duly negotiated delivery order merit particular notice by Ohio lawyers.²⁹ A delivery order is simply a written order to deliver goods addressed to any issuer of warehouse receipts or bills of lading.³⁰ A delivery order, then, is analogous to a check drawn on a bank, and a bailee's obligation under a delivery order is similar to a bank's obligation under a check in that it accrues only upon acceptance.³¹ As a result, prior to acceptance by the bailee, the holder of a duly negotiated delivery order has nothing but the issuer's obligation, together with that of any indorser, to procure the acceptance of the bailee.³² Consequently, "title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated."³³

As has been indicated, the holder to whom a negotiable document of title has been duly negotiated may acquire, under the law of agency or estoppel, rights greater than those held by the person who negotiated the document.³⁴ However, the transferee of a document, whether non-negotiable or negotiable (in the absence of due negotiation), acquires only the rights which his transferor had or had actual authority to convey.³⁵ But a negotiable document, even in the absence of due negotiation, does stand in place of the goods, and the bailee cannot safely deliver the goods covered by the document until the document has been surrendered.³⁶ The rights of the transferee of a nonnegotiable bill can, on the other hand, be defeated by a buyer from the transferor in the ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights.³⁷

²⁷ *Supra* note 25. See generally *id.* Comments 1-4.

²⁸ Ohio Rev. Code § 1307.31 (UCC § 7-503).

²⁹ Delivery orders are probably the third most frequently used type of document of title, coming after warehouse receipts and bills of lading. The statutory definition of the rights of a holder of a duly negotiated delivery order is new.

³⁰ Ohio Rev. Code § 1307.01(A)(4) (UCC § 7-102(1)(d)).

³¹ Ohio Rev. Code § 1307.30(A)(4) (UCC § 7-502(1)(d)). For checks see Ohio Rev. Code §§ 1303.46-49 (UCC §§ 3-410-413).

³² *Ibid.*

³³ Ohio Rev. Code § 1307.31(B) (UCC § 7-503(2)).

³⁴ *Supra* note 16.

³⁵ Ohio Rev. Code § 1307.32(A) (UCC § 7-504(1)).

³⁶ *Supra* note 15.

³⁷ Ohio Rev. Code § 1307.32(B) (UCC § 7-504(2)).

NON-SUBSTANTIVE CHANGES IN EXISTING LAW

It should be noted that article 7 was adopted verbatim in Ohio with only six non-substantive changes in the language promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws as their Official 1958 Text. The first change, the numbering of the sections, was required by Revised Code section 103.13 which provides that the Ohio Legislative Service Commission shall number the sections of any new act in conformity with the Revised Code unless such act is already so numbered. This variation in section numbers will be a problem for Ohio lawyers with all of the articles of the Code, since it will require the use of a correlation table for Ohio lawyers to keep track of decisions in other states construing particular sections of the Code. Such tables are already available. The second change, omission of the short title of article 7,³⁸ was also made to conform to the plan for the codification of Ohio laws.³⁹ Unfortunately in these two matters it simply is not possible to be uniform both with the balance of the Ohio laws as revised and with the Code as promulgated and adopted in other states. Except for checking out-of-state decisions and comments, however, Ohio lawyers no doubt will be better off to have the carefully developed framework of the Revised Code left intact. Any special treatment of the Code would have invited further exceptions and ultimate destruction of the framework so carefully developed by the Ohio Bureau of Code Revision. The third change merely substitutes "section 1307.23 of the Revised Code" (*i.e.*, UCC § 7-308) for "law" in Revised Code section 1307.22 (UCC § 7-307). Since the 1956 recommendations of the Editorial Board for the Uniform Commercial Code had included changing to "law" from "this Article,"⁴⁰ the Ohio variation at quick glance seems to reverse the intention of the Code by narrowing the cross reference. On the other hand, Revised Code section 1307.23 (UCC § 7-308) would seem to cover all sales likely to be made by a carrier and includes a specific cross reference to Revised Code section 1307.15

³⁸ "Section 7-101. Short Title.

This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title."

³⁹ The annotation to UCC § 7-101 in Ohio Legislative Service Commission, Ohio Annotations to Uniform Commercial Code, Information Bulletin No. 1958-1 1960 [hereinafter cited as Legislative Service Commission Annotations] refers to the annotation to UCC § 1-101 which states: "This type of title section was formerly employed in the General Code, *e.g.*, sec. 1079-1. however, all such sections were deleted during the recent revision of the Ohio statutes; see rule (B) (2) (D) of the Bureau of Code Revision."

⁴⁰ Section 7-307 of the 1956 Recommendations of the Editorial Board for the Uniform Commercial Code (1957).

(UCC § 7-210) which would seem to be incorporated by such cross reference into Revised Code section 1307.22 (UCC § 7-307). So this variation from the Code, when carefully studied, seems to have no substantive effect. The fourth and fifth changes are merely typographical errors whereby "division" was used instead of "diversion" in Revised Code section 1307.27(A)(5) (UCC § 7-403(1)(e)) and "him" was used instead of "hire" in Ohio Revised Code section 1307.01 (A)(8) (UCC § 7-102(1)(h)). By the sixth and last change, section 10-104 of article 10, which preserves existing law regulating documents of title and bailees, was merely renumbered as Ohio Revised Code section 1307.02, with appropriate changes in the numbers of sections referred to therein. With article 7, then, Ohio lawyers, except for the problem of correlating section numbers, can make use of the official comments (which originally were intended to have somewhat the force of law),⁴¹ cases in other jurisdictions,⁴² and the extensive commentary which has been accumulating on the Code. Until now, however, nothing has been written with particular reference to the impact on Ohio law of article 7,⁴³ and, indeed, not a great deal has been written from a general viewpoint on this article.⁴⁴ The principal

⁴¹ See UCC § 1-102(3)(f) in 1951 Final Text Edition of the Code. This section was omitted in the 1956 Recommendations, *supra* note 40.

⁴² The Commercial Code is to be included in 1962 in the West Publishing Company's Uniform Laws Annotated. Cases which have arisen thus far under the Code as adopted in Pennsylvania have been compiled in Del Duca and King, *Commercial Code Litigation* (1961) which is printed by the Dickinson School of Law, Carlisle, Pa. Only one case, the United States Fidelity & Guaranty Co. case, *supra* note 21, has arisen under article 7 as adopted in Pennsylvania. Eighty-six cases have arisen under the other articles of the Code as adopted in Pennsylvania in 1954.

⁴³ Changes made by article 7 in Ohio law have been listed in the Legislative Service Commission Annotations, the introduction to which states: "The number of changes of prior law to be found in this article [7] is not substantial, and, in the main, article seven is a consolidation and restatement of existing statutes and decisions. This is particularly true when this article is compared with other sections of the commercial code."

⁴⁴ Compare 7 citations for article 7 with 59 for article 2 and 74 for article 9 in the selected bibliography appended to Goodrich and Wolkin, *The Story of the American Law Institute, 1923-61* (1961). The article 7 citations in the selected bibliography are: Boshkoff, "Article 7 of the Uniform Commercial Code," 39 Mich. S.B.J. 14 (Dec. 1960); Braucher, "Documents of Title (Under the Uniform Commercial Code)," Joint Committee on Continuing Legal Education, Philadelphia, 1958; Braucher, "Uniform Commercial Code—Documents of Title," 102 U. Pa. L. Rev. 831 (1954); Littleton, "Article 7: Documents of Title," 15 U. Pitt. L. Rev. 595 (1954); Patton, "Warehouse Receipts, Bills of Lading and Other Documents of Title: A Comparison of the Texas Law and Article Seven of the Uniform Commercial Code," 31 Texas L. Rev. 167 (1952), 32 Texas L. Rev. 321 (1954); Pryor, "Article 7—Documents of Title; An Attempt at Commercial Uniformity," 1952 Wis. L. Rev. 332; Note, 44 Ill. L. Rev. 100 (1949).

reason for this paucity of learned comment is that article 7 in coverage and in substance does not make many significant changes in former law.⁴⁵

MAJOR SUBSTANTIVE CHANGES IN EXISTING LAW

Even the substantive changes in the existing Ohio law are not dramatic and, in most instances, variation from existing language is a clarification or coverage of some previously open point. Thus the traditional phrases "in apparent good order, except as noted (contents and condition of contents of packages unknown)" and "said to contain" continue, if true, to protect the bailee from liability—although the Code does require that such statements be "conspicuous."⁴⁶ Likewise the traditional phrase "Shipper's weight, load and count" may be inserted in a bill of lading to free the carrier from responsibility for misdescription caused by improper loading by the shipper.⁴⁷ The Code puts a duty on warehouseman and carrier to exercise such care against loss or damage as a "reasonably careful man would exercise under like circumstances,"⁴⁸ but there is a saving clause which retains any statute imposing "liability upon a common carrier for damages not caused by its negligence."⁴⁹ (A similar saving clause retaining any statute imposing higher duties on warehousemen, which is an optional provision in the Code, was not adopted in Ohio because no such statute existed.)⁵⁰ In clarifying and elaborating some topics, however, substantive changes have been made.

Also see 3 Report of the Law Revision Commission of the State of New York, Study of the Uniform Commercial Code 1759 (1955), New York Annotations (1961), Massachusetts Annotations (1953), Pennsylvania Annotations (1952), and 17 Albany L. Rev. 111 (1953).

⁴⁵ The New York Annotations to the Uniform Commercial Code 189 (1961) quote the New York Law Revision Commission as having reported, "Article 7 contains a significant change in the concept of 'due negotiation' and some important exceptions, in the doctrine of *caveat emptor*. Apart from these innovations, article 7 makes relatively few basic changes in the present law."

⁴⁶ See Ohio Rev. Code § 1301.01(j) (UCC § 1-201(10)), Ohio Rev. Code § 1307.08 (UCC § 7-203) and Ohio Rev. Code § 1307.16(A) (UCC § 7-301(1)).

⁴⁷ Ohio Rev. Code § 1307.16 (UCC § 7-301).

⁴⁸ *Supra* note 17.

⁴⁹ Ohio Rev. Code § 1307.24(A) (UCC § 7-309(1)). Moreover, in Ohio Rev. Code § 1307.27(A)(2) Ohio adopted some restrictions on claims against carriers and warehousemen in the form of an optional clause in UCC § 7-403(1)(b) which puts the burden of establishing the bailee's negligence on the claimant. This seems to be in accord with previous Ohio case law. See Legislative Service Commission Annotations to UCC § 7-403 citing *Hanlon v. Miller Transfer & Storage Co.*, 149 Ohio St. 387, 79 N.E.2d 220 (1948).

⁵⁰ Ohio Rev. Code § 1307.09 has no fourth subparagraph equivalent to UCC § 7-204(4). See Legislative Service Commission Annotations to UCC § 7-204, note 3.

The bailee's lien, for example, is categorized into a specific lien, a general lien and a security interest. A warehouseman can have any or all of these liens, but a carrier normally could have only a specific lien (because the P.U.C.O. would not permit special arrangements with particular shippers).⁵¹ The specific lien attaches automatically, is limited to the usual charges arising out of a storage or carriage transaction, and covers only charges in relation to the particular goods.⁵² If the warehouse receipt states "that a lien is claimed for charges and expenses in relation to other goods," a general lien arises and storage charges on other goods may be asserted as a lien.⁵³ Finally, a security interest for charges other than those for warehousing services (for example, loans and interest) may be asserted if the maximum amount which may be claimed is stated on the receipt.⁵⁴ The enforcement of these liens may be by substantially the present procedures or by a new and more flexible procedure based on a standard of "commercial reasonableness."⁵⁵ This latter procedure is not available when the goods have not been "stored by a merchant in the course of his business" and so will not be available for household goods storage companies and may be used only with caution if there is any doubt as to the nature of the storage transaction. Where applicable, this new procedure (available to warehousemen and carriers) permits "public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable." The term "merchant" is defined in Revised Code section 1302.01(A)(5) (UCC § 2-104(1)), but "commercially reasonable" is not defined. It is provided, however, that:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in

⁵¹ See, e.g., Ohio Rev. Code §§ 4907.28 (1953), 4907.35 (1953), 4907.36 (1953) and 4907.37 (1953).

⁵² Ohio Rev. Code § 1307.14(A) (UCC § 7-209(1)) for warehouseman and Ohio Rev. Code § 1307.22(A) (UCC § 7-307(1)) for carriers.

⁵³ Ohio Rev. Code § 1307.14(A) (UCC § 7-209(1)).

⁵⁴ Ohio Rev. Code § 1307.14(B) (UCC § 7-209(2)). This is a security interest perfected by possession without filing. See Ohio Rev. Code § 1309.24 (UCC § 9-305).

⁵⁵ Ohio Rev. Code § 1307.15 (UCC § 7-210) for warehousemen and Ohio Rev. Code § 1307.23 (UCC § 7-308) for carriers.

the type of goods sold, he has sold in a commercially reasonable manner.⁵⁶

Closely related to enforcement of the warehouseman's lien is the warehouseman's right to terminate storage at his option. In addition to the circumstances which justify termination of storage under the present Ohio warehouse receipts act, such as goods which are about to deteriorate or decline in value to less than the amount of the warehouseman's lien and goods which are a hazard,⁵⁷ article 7 empowers the warehouseman (where the period of storage is not fixed expressly by the document of title) to terminate storage by at least thirty days' notice to the person on whose account the goods are held and any other persons known to claim an interest in the goods.⁵⁸

In addition to enlargements of existing rules such as the provisions just considered pertaining to liens and termination of storage, there are a number of entirely new concepts developed to meet the new practices and developments in transportation and communication since the uniform acts were promulgated.⁵⁹ For example, under Revised Code section 1307.20(A) (UCC § 7-305(1)) the consignor may request that the bill of lading be issued at the destination rather than at the place of shipment, thus permitting the document to precede even a jet plane shipment to the consignee. Through bills of lading are provided for in Revised Code section 1307.17 (UCC § 7-302), and the rights of consignors via freight forwarding companies are covered in Revised Code 1307.31(C) (UCC § 7-503(3)). In the original Code the device of field warehousing was made subject to article 9, and security interests resting on field-warehousing arrangements could be perfected only by filing, but UCC § 7-205(2) was deleted in the 1956 Recommendations because of disapproval by the New York Commission and by a committee of the American Bankers Association.⁶⁰ In the Official 1958 Text of the Code as adopted in Ohio, field warehousing does not require filing but a cautious holder of a security interest in field-warehoused goods might rely on filing as an alternative method of protection for fear that one of the requirements of possession might not be met because of improper administration of the field warehouse.⁶¹

⁵⁶ *Ibid.*

⁵⁷ Ohio Rev. Code § 1307.11(B), (C) (UCC § 7-206(1), (2)).

⁵⁸ Ohio Rev. Code § 1307.11(A) (UCC § 7-206(1)).

⁵⁹ See generally, Note, "Rapid Transmission of Negotiable Documents of Title for High Speed Shipments Under the Proposed Commercial Code," 44 Ill. L. Rev. 100 (1949).

⁶⁰ See UCC § 7-205(2) in 1956 Recommendations of the Editorial Board for the Uniform Commercial Code (1957); see also the New York Annotations to Uniform Commercial Code 194 (1961) which were prepared by the New York Commission on Uniform State Laws. See generally Friedman, "Field Warehousing," 42 Col. L. Rev. 991 (1942).

⁶¹ See Braucher, "Documents of Title," 66-67, 102-105 (1958).

There are, of course, too many changes in the existing law, and innovations as well, to be discussed in the present article, but for most Ohio lawyers the present article should suffice as a general introduction to article 7. Those lawyers with warehousemen, wharfingers, and carriers amongst their clients, however, would do well to study carefully not only the text of article 7 but also the official comment, along with Professor Braucher's handbook published by the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association.⁶² For one thing, existing forms used by such clients may require changes and new forms may be needed. For example, "Nonnegotiable" no longer need be printed on nonnegotiable warehouse receipts,⁶³ and delivery orders as defined in Revised Code section 1307.01(A)(4) (UCC § 7-102(1)(d)) may prove useful when prepared to take advantage of the express provision of Revised Code section 1307.30(A)(4) (UCC § 7-502(1)(d)) that a bailee will have as complete and as direct an obligation to the holder of a duly negotiated delivery order as to the original bailor once the bailee has accepted the delivery order.⁶⁴ Indeed, since the Code was written for lay as well as professional reference, it might be useful to supply commercial bailee clients with the same materials as this article recommends for counsel to study so that they can themselves check for new procedures available to them under the Code.

CONCLUSION

In general, then, article 7 with its greater comprehensiveness, coordination, and clarity will reduce the day-to-day problems of the bar with routine matters relating to warehouse receipts and bills of lading. There will be specific answers to many more routine questions—and the answers will be better indexed and easier for clients to understand. When controversies develop on new questions not specifically covered by a rule, however, the Commercial Code's invitation to proof of commercial custom will require greater liaison between law and commerce and deeper examination of fundamental policy con-

⁶² Available at \$3.00 per copy (4 or more \$2.50 per copy) from the Joint Committee at 133 South 36th St., Philadelphia 4, Pennsylvania.

⁶³ Compare Ohio Rev. Code § 1307.04 (UCC § 7-104) with Ohio Rev. Code § 1323.09, repealed effective July 1, 1962 (U.W.R.A. § 7). But see Ohio Rev. Code § 1301.01(J) (UCC § 1-201(10)) and Braucher, Documents of Title, American Law Institute 18 (1958). It should be remembered, however, that the client may wish to use the same form for interstate transactions and so federal and I.C.C. requirements should be met in addition to Ohio requirements. See Braucher, Documents of Title, American Law Institute 18 (1958).

⁶⁴ A form of delivery order is presented as Form 5 in Braucher, *supra* note 63, at 158. Also see discussion *id.* at 16-18, 67-70, and 105-07.

siderations than have been customary; for article 7 covers an area of the law where problems have more often been decided on technical legal grounds than on whether a given rule would further or impede the convenience of trade. Thus both lawyers and judges in dealing with article 7 will have to acquire a greater awareness of current business practice than they now usually possess. Article 7 frequently sets up a rule in language such as "observance of reasonable commercial standards" and "in the current course of business or financing,"⁶⁵ on "any terms which are commercially reasonable," "in the usual manner in any recognized market," and "in conformity with commercially reasonable practices among dealers in the type of goods sold."⁶⁶ These and similar phrases will compel draftsman, counsellor, advocate, and judge to go out from the library to learn what is happening in the market place. Such adaptability to changing business methods is amongst the primary goals of the sponsors of the Uniform Commercial Code⁶⁷ but it will require the advocate to file a Brandeis brief⁶⁸ and the judge to be a Lord Mansfield.⁶⁹ Commercial law will become realistic, flexible and modern only if the bar and bench become so too.

⁶⁵ Ohio Rev. Code § 1307.29(D) (UCC § 7-501(4)).

⁶⁶ Ohio Rev. Code § 1307.15(A) (UCC § 7-210(1)). Also see Ohio Rev. Code § 1307.23(A) (UCC § 7-308(1)).

⁶⁷ In Ohio Rev. Code § 1301.02(B)(2) (UCC § 1-102(2)(b)) one of the "underlying purposes and policies" is stated to be "to permit the continued expansion of commercial practices through custom, usage and agreement of the parties."

⁶⁸ For a description of the Brandeis brief see Freund, *The Supreme Court of the United States*, 120 (1961), and for a discussion of the problems created by the use of it see *id* at 150-154.

⁶⁹ For a description of how Lord Mansfield, the "father of commercial law," incorporated the principles of mercantile and maritime law into the archaic jurisprudence of the 18th century British Common Law, see Fifoot, *Lord Mansfield* (1936). In particular, compare Lord Mansfield's use of a special verdict by a jury of eminent merchants to find "current usage" with the problems of proof of commercial standards which will arise under the Commercial Code. *Id.* at 104-117.