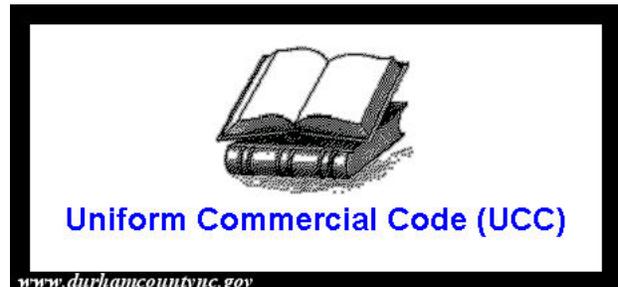


Uniform Commercial Code

Introduction

The Uniform Commercial Code (UCC or the Code) is one of a number of uniform acts that have been promulgated in conjunction with efforts to harmonize the law of sales and other commercial transactions in all 50 states within the United States of America. This objective is deemed important because of the prevalence today of commercial transactions that extend beyond one state (for example, where the goods are manufactured in state A, warehoused in state B, sold from state C and delivered in state D). The UCC deals primarily with transactions involving personal property (moveable property), not real property (immovable property).



The UCC is the longest and most elaborate of the uniform acts. It has been a long-term, joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). Judge Herbert F. Goodrich was the Chairman of the Editorial Board of the original 1952 edition, and the Code itself was drafted by some of the top legal scholars in the United States, including such luminaries as Karl N. Llewellyn, Soia Mentschikoff, and Grant Gilmore. The Code, as the product of private organizations, is not itself the law, but only recommendation of the laws that should be adopted in the states. Once enacted in a state by the state's legislature, it becomes true law and is codified into the state's code of

statutes. When the Code is adopted by a state, it may be adopted verbatim as written by ALI/NCCUSL, or may be adopted with specific changes deemed necessary by the state legislature. Unless such changes are minor, they can affect the purpose of the Code in promoting uniformity of law among the various states.

The ALI/NCCUSL has also established a permanent editorial board for the Code. This board has issued a number of official comments and other published papers concerning the Code. Although these commentaries do not have the force of law, courts interpreting the Code often cite them as persuasive authority in determining the effect of one or more provisions. Courts interpreting the Code generally seek to harmonize their interpretations with those of other states that have adopted the same or a similar provision, except where specific aspects of the Code were changed by that state when adopting it, or where other aspects of state law require a different decision.

The Code, in one or another of its several revisions, has been enacted in all of the 50 states, as well as in the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands. Louisiana has enacted most provisions of the UCC with the exception of Article 2, preferring to maintain its own civil law tradition for governing the sale of goods.



Louisiana jurisprudence refers to the sections of the UCC as “chapters” instead of articles, since the term “articles” is used to refer to provisions of the state’s Civil Code. However, the use of different terms for UCC articles is not unique to Louisiana; neighboring Arkansas also refers to UCC articles as “chapters”, the term for equivalent subdivisions in its code of statutes. (“Article” in that state's law generally refers to a subdivision of the Arkansas Constitution.)

UCC Articles

The Uniform Commercial Code deals with the following subjects under consecutively numbered Articles:

Article	Title	Contents
1	General Provisions	Definitions, rules of interpretation
2	Sales	Sales of goods
2A	Leases	Leases of goods
3	Negotiable Instruments	Banknotes and drafts (commercial paper)
4	Bank Deposits	Banks and banking, check collection process
4A	Fund Transfers	Transfers of money between banks
5	Letters of Credit	Transactions involving letters of credit
6	Bulk Transfers and Bulk Sales	Auctions and liquidations of assets
7	Warehouse Receipts, Bills of Lading and Other Documents of Title	Storage and bailment of goods
8	Investment Securities	Securities and financial assets
9	Secured Transactions	Transactions secured by security interests

In 2003, a major revision of Article 2 modernizing many aspects (as well as changes to Article 2A and Article 7) was proposed by the NCCUSL and the ALI. Although being considered, there are no states that have yet adopted the revised version of Article 2.

In 1989, the National Conference of Commissioners on Uniform State Laws recommended that Article 6 of the UCC, dealing with bulk sales, be repealed as obsolete. It remains in force in several jurisdictions.



A major revision of Article 9, dealing primarily with transactions in which personal property is used as security for a loan or extension of credit, was enacted in many states with an effective date of July 1, 2001.

The controversy surrounding what is now termed the Uniform Computer Information Transactions Act (UCITA) originated in the process of revising Article 2 of the UCC. The provisions of what is now UCITA were originally meant to be "Article 2B" within a revised Article 2 on Sales. As the UCC is the only uniform law that is a joint project of NCCUSL and the ALI, both associations must agree to any revision of the UCC (i.e., the model act; revisions to the law of a particular state only require enactment in that state). The proposed final draft of Article 2B met with controversy within the ALI, and as a consequence the ALI did not grant its assent. The NCCUSL responded by renaming Article 2B and promulgating it as the UCITA. As of October 12, 2004, only Maryland and Virginia have adopted UCITA.

The overriding philosophy of the Uniform Commercial Code is to allow people to make the contracts they want, but to fill in any missing provisions where the agreements they make are silent. The law also seeks to impose uniformity and streamlining of routine transactions like the processing of checks, notes, and other routine commercial paper. The law frequently distinguishes between merchants, who customarily deal in a commodity and are presumed to know well the business they are in, and consumers, who are not.

The UCC also seeks to discourage the use of legal formalities in making business contracts, in order to allow business to move forward without the intervention of lawyers or the preparation of elaborate documents. This last point is perhaps the most questionable part of its underlying philosophy; many in the legal profession have argued that legal formalities discourage litigation by requiring some kind of ritual that provides a clear dividing line that tells people when they have made a final deal over which they could be sued.

Conspiracy Theories

The Uniform Commercial Code plays a significant part in the legal theories of far right groups such as the Christian Patriot movement, Sovereign Citizen Movement, and the Posse Comitatus. Their theory is that a secret treaty made in 1930 put the United States and other countries around the world in "bankruptcy" with the "international bankers" being the "creditor/rulers", who prefer commercial law to common law. An alternate theory, held by the Montana Freemen, is that an "affidavit of truth" submitted "in commerce" could create a lien which had to be paid, such as the "draft liens" created by LeRoy Schweitzer, who was eventually convicted of fraud and other federal crimes. The newer "redemption movement" even claims that the Uniform Commercial Code is now "actually the supreme law of the land".

Drafting of Uniform Acts

In the United States, a Uniform Act or "Uniform Law" is a proposed state law drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL is a body of lawyers, both private practitioners and government attorneys; judges, both state and federal; and law professors, typically appointed by the governor of each state. NCCUSL drafts laws on a variety of subjects and propose them for enactment by each state, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. NCCUSL was established in 1892. The NCCUSL does not have any legislative power itself; uniform acts become laws only to the extent they are enacted into law by state legislatures.



Among the most influential uniform acts are the Uniform Commercial Code, Uniform Probate Code, Uniform Trust Code, Uniform Partnership Act, Uniform Limited Liability Company Act, Uniform Transfers to Minors Act, Uniform Certification of Questions of Law Act, Uniform Enforcement of Foreign Judgments Act, Uniform Controlled Substances Act, Uniform Arbitration Act, Uniform Environmental Covenants Act, Uniform Conservation Easements Act, Uniform Management of Institutional Funds Act, Uniform Interstate Family Support Act, Uniform Child Custody Jurisdiction and Enforcement Act, and Uniform Anatomical Gift Act. However, there are well over 100 uniform acts. NCCUSL periodically updates these acts. Recent examples include the Revised Uniform Anatomical Gift Act, Revised Uniform Arbitration Act, Revised Uniform Partnership Act, Revised Uniform Limited Liability Company Act, and the

Uniform Prudent Management of Institutional Funds Act. The NCCUSL website should be consulted for the latest uniform acts or revisions thereof.

The need for Uniform Acts results in large part from the inherent nature of the American federal system. The United States Congress lacks authority under the U.S. Constitution to directly legislate in many areas, because all powers not explicitly granted to the federal government are reserved to state governments under the Tenth Amendment. At the same time, there is a desire to have laws across the states that are as similar as practicable. The widespread enactment of uniform state laws has reduced the preemption of state law by federal legislation.

Some legal scholars have argued that the existence and codification of uniform acts, most notably the Uniform Commercial Code, has given American law less of a common law flavor and made it more similar to a civil law system.

Uniform Commercial Code Excerpt

Sale by Auction

1. In a sale by auction if goods are put up in lots, each lot is the subject of a separate sale. A lot is a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.
2. A sale by auction is complete when the



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2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid, the

- auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at anytime until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case, a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
 4. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Uniform Commercial Code Definitions

The Uniform Commercial Code provides definitions to assist as a standard way of interpreting transactions.

“Buyer in ordinary course of business” means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership, rights or security interest or leasehold interest of a third party in the goods buys in ordinary



course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“**Cancellation**” occurs when either party puts an end to the lease contract for default by the other party.

“**Commercial unit**” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single Article, as a machine, or a set of Articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.



“**Conforming**” goods or performance under a lease contract means goods or performances that are in accordance with the obligations under the lease contract.

“**Consumer lease**” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and who takes under the lease primarily for a personal, family or household purpose.

“**Fault**” means wrongful act, omission, breach or default.

“**Finance lease**” means a lease with respect to which:

- The lessor does not select, manufacture or supply the goods;
- The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
- One of the following occurs:
 - The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - The lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

- If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

“**Goods**” means all things that are movable at the time of identification to the lease contract, or are fixtures (NRS 104A.2309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

“**Installment lease contract**” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.



“Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

“Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

“Lease contract” means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

“Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

“Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

“Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing”

may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

“**Lessor**” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

“**Lessor’s residual interest**” means the lessor’s interest in the goods after expiration, termination or cancellation of the lease contract.

“**Lien**” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

“**Lot**” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

“**Merchant lessee**” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

“**Present value**” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly



unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

“**Purchase**” includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

“**Sublease**” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

“**Supplier**” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

“**Supply contract**” means a contract under which a lessor buys or leases goods to be leased.

“**Termination**” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.