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PREFACE

The Uniform Commercial Code (“U.C.C.”) is state law. The Bankruptcy Code (“Code”) is federal law, as are other important insolvency laws that may interrelate with the U.C.C., *e.g.*, in the cases of payments and securities. The U.C.C. and the Code should coincide, and normally they do. Different policies exist at times, however, and changes in one law may not be followed in the other. Under such circumstances, federal law preempts as a constitutional matter, and a very different result can occur than under state law (the U.C.C.) alone.

U.C.C. Article 9 represents one extensive example, in which Code § 544 provides for otherwise unsecured creditors to prevail over an unperfected security interest even if there is no creditor who could prevail under state law. Furthermore, even if the security interest is perfected under the U.C.C., it may be avoided, *e.g.*, if it constitutes a preference under Code § 547 or a fraudulent transfer under § 548. *See infra* Chapter Two.

By no means, however, are all such inconsistencies related to Article 9. U.C.C. § 2-702(2), for example, may go further than the Code allows; *but see* the 2005 Bankruptcy Code amendments at § 546(c), which enhance the seller’s right to reclaim. *See also* U.C.C. § 4-216, which involves insolvency and preferences in the case of banks.

The purpose of this book is to identify the significant situations where the U.C.C. and insolvency law (the Code) intersect, to inform the reader about the issues underlying that intersection, and then to guide the practitioner in dealing with the potential difficulties raised. As with all the titles in *The ABCs of the UCC* series, this book is free of the extensive footnotes and convoluted discussions that often accompany legal literature. Rather, it is written to present basic concepts in a straightforward manner and to orient the reader for future research. We are publishing

this second edition not only to reflect updates in the U.C.C. and its case law, but to include recent changes to the Code as a result of the 2005 amendments.

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