

The State of CT Laws

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As well as providing assistance to those researching or using state certificate of title (CT) laws, this *Compendium* represents something in the nature of a report on the state of American CT laws. This is long overdue, as the state CT laws are an important (and in many ways unique) part of our legal landscape, affecting a wide variety of important legal areas (including commercial and consumer transactions, credit, transportation, property, contracts, business entities, taxes, and administrative law). There is a dramatic and foundational relation to the laws governing sales and leases of goods, security interests, ownership and title fraud, vehicle registration, and taxes. Added to this is the uncertain impact of the piecemeal movement toward electronic CT transactions. These issues directly affect the basic transportation needs of most Americans and are essential to the personal mobility at the heart of a modern lifestyle.

Yet, there has been surprisingly little written on the subject. By and large, this is not an area of interest to academic writers. And as a matter of state law it is (at least for now) beyond the focus of those interested primarily in federal law. Some of the issues are so surprisingly complex as to be poor prospects for a casual treatment in local legal publications, and yet they are so state-specific as to resist broader coverage in national journals.

As a result, state CT laws and their relation to other laws may seem almost shrouded in mystery. CT laws are interstitial, *i.e.*, they are narrow in scope and therefore dependent on their relation to other more comprehensive and foundational laws. Without these other laws, the CT laws cannot function or have meaning, yet many CT laws seem to have been written in isolation, without any effort to consider or relate the scope, terminology, concepts, and requirements of the CT law to other applicable law. The obvious example is the relation to Uniform Commercial Code (UCC) Article 9. In part it was this relation, and the need to update state CT laws to reflect the recent changes to Article 9 (which resolved numerous CT-related problems,¹ but cannot do the job alone), which led to development of the Uniform Certificate of Title Act (UCOTA). But this is only one example; CT laws in general also relate poorly to UCC Articles 2 and 2A (governing sales and leases of goods), contract and property laws, title fraud prevention

1. See, e.g., Alvin C. Harrell, *A Roadmap to Certificate of Title Issues in Revised UCC Article 9*, 53 CONSUMER FIN. L.Q. REP. 202 (1999).

efforts, consumer protection law, corporate law, tort law, securitization transactions, conflicts of law, bankruptcy and debtor-creditor law, and the laws of Indian tribes. Now, as if to add another dimension to these problems, some states are rushing to embrace electronic technology, often without adequate consideration of how this affects CT law issues. While the relation of CT law to Article 9 is widely recognized as a problem area in need of attention, at least the revisions to Article 9 address these matters and provide guidance on some issues,² even in the absence of CT law reform. In contrast, with respect to many of the other areas of law noted above, there is little or no guidance in either the CT law or the other applicable law as to the relation between them.

While UCOTA was drafted specifically to address these problems, and to fit within the context of other applicable laws, many existing CT laws seem to have been written without any regard to other law or accepted terminology. Moreover, in many cases they have been revised piecemeal over the years, with little effort to view the CT law as a whole or in relation to other law. Professor Bruce Campbell's comment with respect to Ohio law is in fact far more broadly applicable to CT laws generally:

The [state] legislature has often amended the [CT law], so that the statute has grown in length and complexity over the years to become an odd patchwork of disparate provisions. Legislative activity outside the [CT law], such as the adoption of the . . . UCC . . . , when the [CT law] was already more than three decades old, has sometimes challenged the [CT law] regime. The [CT law] and UCC Articles 2 and 9 at least overlap in the areas of ownership and security interests in automobiles, creating a friction that has not been reduced by . . . adoption of revised Article 9 in 2001.

Although the [CT law] is often excruciatingly detailed on mechanical matters, it is often neither detailed nor clear on the effects of performing the mechanics.

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[As a result,] very little is clear in the statute about the intended operation and effect of the [CT law] title mechanisms in particular situations.³

The preface to this *Compendium* has already noted the common statutory misuse of terms such as "lien" and "title." For example, some states (in their CT laws) define the term "owner" in part as one "having the title to the vehicle" (or using similar language). It is often unclear whether this refers to: (1) legal title, *i.e.*, ownership under traditional property law; or (2) the CT. Other states define "owner" to include anyone in possession of the vehicle. Some states further confuse this issue by providing that "title" cannot pass until the CT is assigned and the assignee is registered in the files of the CT

2. *Id.*

3. Bruce A. Campbell, *Ohio Car Buyers, Their Financers, and "Uniformers" Beware, Certificates of Title Control in Ohio*, 60 CONSUMER FIN. L.Q. REP. 216, 217 (2006) (also concluding that, as a result, interested parties "must beware of the title risks created by the [Ohio CT law].").

office, a provision that is seemingly contrary to well-established and otherwise applicable property and contract law in most states. (Most likely this is intended to reference what UCOTA defines as the “owner of record,” rather than a limitation on ownership as such). The result is often a jumble of internal statutory contradictions relating to essential legal terms and requirements. For example, this misuse of terminology creates uncertainty as to the meanings of terms such as “owner” and “title,” and difficulty determining who the “owner” is at a given point in time, a significant issue given the central roles that these terms play in CT law and transactions.

In contrast, UCOTA section 2(a)(18) defines “owner” as a person having legal title (*i.e.*, ownership under generally applicable rules of property law) and UCOTA section 3 makes clear that the CT law is supplemented by general principles of law and equity (*e.g.*, including property and contract law). UCOTA section 2(a)(19) distinguishes the “owner of record,” meaning the owner indicated in the files of the CT office. These simple and straightforward UCOTA provisions belie the complexity of the ownership issues that exist under existing state CT laws, and as suggested in the Preface this presented challenges to the *Compendium* authors. It appears that there are other substantive legal problems that lie beneath the surface waiting to be discovered. Again, the basic choice in dealing with an existing CT law is whether to follow precisely what the statute says, even though this often involves the use of confusing or erroneous terminology, or to assume what the statute is probably intended to mean. In some ways the issue is even more difficult for ownership issues than for security interests, because there is no comprehensive law like UCC Article 9 that specifically displaces and confines the ambiguities in the CT law. (UCC Article 2 helps in sales of goods transactions, but the relation of Article 2 to the CT law is less clear, and specific, than in the case of Article 9.)

This *Compendium* is designed to help. As noted, it adopts a hybrid approach, using the existing statutory language where possible but integrating it into a description of the law consistent with other principles of applicable law. Generally, for example, this *Compendium* uses the term “ownership” in reference to a property interest, rather than using the term “title,” and uses the term “CT” to reference the record created by a state to evidence ownership and designated as such (again, rather than using the more ambiguous term “title” to refer to a CT). However, there was no similar, simple solution where the CT statute refers to the process of “titling” a vehicle (or boat or manufactured home), as this term often refers to a process that may include both registration and issuance of a CT. UCOTA does not apply to registration (as opposed to an application for a CT), and in existing CT laws there is often little precise guidance as to the meaning of a reference to the “titling” process. Therefore, this *Compendium* generally has retained the use of that term, but uses it in a broad, undefined sense (essentially referring to any type of CT office procedure).

These issues (*e.g.*, the CT law treatment of security interests, “titling,” and ownership) merely illustrate of the types of analytical exercise needed to apply and understand many existing CT laws. Adopting this hybrid type of approach, state CT laws can be interpreted so as to fit more clearly into the framework of other laws with which they must work. This *Compendium* helps to serve that purpose, and (if the effort is successful) the deficiencies of existing state CT laws can be minimized (and may even go

unnoticed by many). This effort can be further enhanced by reference to the UCOTA and UCC definitions, which were carefully drafted to serve the purposes of CT laws within the overall context of other applicable laws. For example, the UCOTA definitions of “owner” and “owner of record” probably describe the meanings that the less precise terminology in many existing CT laws is intended to convey, and may be useful in explaining the intent and operation of existing CT laws. Similarly, the UCOTA and UCC definitions of terms such as “security interest” can be useful in determining the intended meaning of CT law provisions governing “liens.”

More fundamental deficiencies in existing CT laws, such as a failure to consider the scope of the CT law in relation to other laws, or statements about the proper role of the CT law, or the legal consequences of ambiguous statutory language, or a neglect of important CT issues, may require more extensive legal analysis. But, again, references to the UCC, UCOTA, and this *Compendium* may help to fill the void and find the answers to difficult questions.

Thus, the UCC, UCOTA, and this *Compendium* may be useful in resolving problems that arise due to the flaws in existing CT laws. In the long run, however, these problems can only be addressed by reform of the CT laws. It is not clear why lawmakers (so far) have been so resistant to needed reforms. All of the interested parties have much to gain by a rationalization of these laws, as in UCOTA, and all have much at risk by a continuing failure to do so. In the meantime, however, this *Compendium* will assist those who must work with the existing laws, and perhaps those seeking needed reforms.