MESSAGE FROM THE CHAIR:  
COMMERCIAL FINANCIAL SERVICES COMMITTEE

By Robert A. Zadek  
Buchalter Nemer Fields & Younger  
San Francisco, CA

It is again my pleasure to offer this message to the members of the Commercial Financial Services Committee. We had a lovely time in Columbus, talking, walking, eating, doing peristalsis, stuff like that. Nice meetings, interesting presentations. Now on to the future.

Our home page continues to be enhanced. Most recently, we have added a Master Commercial Finance Calendar, which will contain all meetings of interest to those with a commercial finance practice. Please see the message from Mike Maglio, Chair of this Subcommittee. Special thanks to Mike for his and his firm’s great efforts in this project.

The topics covered by our Survey of Commercial Law at our home page also continues to grow. Please see the message from the Leadership of this Subcommittee for details.

MESSAGE FROM THE CHAIR:  
UNIFORM COMMERCIAL CODE COMMITTEE

By Linda J. Rusch  
Hamline University School of Law  
St. Paul, MN

I hope you have all made plans to attend the Annual Meeting in New York City and London. The programming and events look wonderful. I encourage everyone to take a look at the multitude of offerings. You will find the complete schedule of meetings on the ABA web site at http://www.abanet.org/buslaw/annual00info.html. There is something for everyone.

In New York, the UCC Committee will be sponsoring or cosponsoring the following programs:

Sunday, July 9, 10:30 a.m. -12:30 p.m.  
Deregulating Contractual Choice of Law:  
The Ups and Downs of Changing the UCC Article 1 Choice of Law Rule  
Program Chair-- William Woodward

Monday, July 10, 8:00 -10:00 a.m.  
Commercial-Tech Transactions:  What Transactional Lawyers Should Know About the Interaction of Intellectual Property and Commercial Laws (with Commercial Financial Services Committee)  
Program Chair-- Larry Engel
In New York, this summer, the Committee will be presenting a program on Lending to Lenders, with John Beckstead, Ken Greene and Dan Garner. Should be excellent. For the complete schedule, just check out the home page.

Looking ahead, our Fall Meeting in connection with the CFA Convention will be in New Orleans on Wednesday, October 18. The tentative topics include:

“Soar with the Eagles” – A primer on Aircraft Financing, presented by our own Tom Hancock, Chair of the Aircraft Financing Subcommittee.

“Multi-Borrower Transaction” – An advanced course on this topic, presented by our very own Les Polt, and others handpicked by him.

“How to Lose to the IRS” – An insight into the IRS and how they deal with federal tax liens, including their goals and strategy in bankruptcy cases, disputes with secured lenders and factors, and levies.

Our membership, as well as many of our members, continues to grow. Thanks for your support and interest.

Monday, July 10, 2:00-5:00 p.m.
Presidental Showcase Program:
Collaboration Between Attorney and Client Through Technology (with Corporate Counsel Committee)
Program Chairs-- Robert Haig and Steven Lauer

The UCC Committee is also sponsoring a reception from 5 to 6 p.m. on Saturday, July 8. That reception provides a good opportunity to connect with old friends and make new friends and is a great warm up to the Section’s Welcome Reception that starts at 6:30 that evening at the World Trade Center. These programs and receptions are in addition to the full slate of subcommittee and task force meetings addressing a variety of interesting topics. The tentative schedule for the subcommittees and task forces is reprinted below.

At the UCC Committee meeting, Ed Smith and Carolan Berkley will be giving a presentation on “The Revised Article 9 Enactment Experience: The Adventure Continues.”

In London, the UCC Committee is presenting a program July 19, 10:30-12:30 p.m. on International Secured Transactions in the Global Economy of the Twenty-First Century, Program Chair, Ed Smith.

I am very excited about everything that is happening in the UCC Committee. Come join in the fun!!!!
NOTE: This Newsletter is published by the Uniform Commercial Code Committee and the Commercial Financial Services Committee of the American Bar Association’s Section of Business Law. The views expressed are the views of the authors only, and are not necessarily those of the ABA, the Section or either Committee. Please contact Katherine S. Allen, Farris Warfield & Kanaday, PLC, 424 Church Street, Suite 1800, Nashville, Tennessee 37219, kallen@fwar.com or Kathleen J. Hopkins, Tousley Brain PLLC, 56th Floor, Key Tower, Seattle, Washington 98104-5056, khopkins@tousley.com, with any comments or suggestions.

See the UCC Scorecard on pages 30 - 33 for an update on the status of Revised Article 9, UETA, UCITA and other UCC legislation in all 50 states!

UCC Committee and Subcommittee Meetings Scheduled for New York:

Saturday, July 8, 8-9:00 a.m. Task Force on State Certificate of Title Laws
Saturday, July 8, 8-10:00 a.m. Subcommittee on International Commercial Law
Saturday, July 8, 10-11:00 a.m. Subcommittee on Investment Securities
Saturday, July 8, 11-noon Subcommittee on Leasing
Saturday, July 8, Noon-1:00 p.m. Task Force on Consumer Involvement
Saturday, July 8, 2-4:00 p.m. Committee on Uniform Commercial Code
Saturday, July 8, 4-5:00 p.m. Chairs and Vice Chairs Meeting for UCC Committee
Saturday, July 8, 8-9:00 a.m. Task Force on Revised Article 9 Enactment Process
Saturday, July 8, 9-10:30 a.m. Subcommittee on Secured Transactions
Saturday, July 8, 1-2:00 p.m. Subcommittee on Domestic and International Transactions
Saturday, July 8, 2-3:00 p.m. Subcommittee on Letters of Credit
Saturday, July 8, 2:30-4:30 p.m. Subcommittee on Information Licensing
Saturday, July 8, 2:30-4:00 p.m. Subcommittee on Electronic Financial Services
Saturday, July 8, 3-4:00 p.m. Subcommittee on Scope of the UCC
Saturday, July 8, 4-5:00 p.m. Subcommittee on Article 1
Monday, July 10, 10-11:00 a.m. Task Force on Article 7
Monday, July 10, 10-noon Subcommittee on Payments
Monday, July 10, 1-2:00 p.m. Subcommittee on Sales of Goods
INTERNET SITES OF INTEREST

♦ ABA Business Law Section:  
  www.abanet.org/buslaw

♦ CFS Master Calendar:  
  https://extranet.rc.com/aba/pubCalendar.asp

♦ ABA Joint Committee on Electronic Financial Services: 
  www.abanet.org/buslaw/efss/home.html

♦ UCC Revisions Drafts:  
  www.law.upenn.edu/library/bll/ulc/ulc-frame.htm

♦ NCCUSL Home Page:  
  www.nccusl.org

♦ Series of Papers on UCITA Issues:  
  www.nccusl.org/pressrel/UCITAQA.HTM

♦ NCCUSL Meeting Schedule:  
  www.nccusl.org/meetings.html

♦ UNIDROIT and UNCITRAL web pages for ongoing international commercial law projects are located at www.unidroit.org/ and www.uncitral.org/

MAILBAG AND MISCELLANY

YOUNG LAWYERS WANTED

Calling All Young Lawyers!!! Are you or do you know a young lawyer interested in joining the UCC Committee or CFS Committee? These committees offer an opportunity for a young lawyer to learn more about commercial law and commercial finance.

As you know, the UCC Committee focuses on all areas of commercial law, whether directly covered by the UCC or tangentially covered (e.g., software contracting, suretyship, electronic money). The UCC Committee also monitors commercial law developments and participates in statutory reform efforts. The CFS Committee similarly focuses on financial aspects of commercial transactions and includes numerous subcommittees covering every area of a financial attorney's practice, and meets annually with the Commercial Finance Association (CFA).

Ways in which a young lawyer can become involved include attending or speaking at an Annual or Spring Meeting, joining a subcommittee or writing an article for The Commercial Law Newsletter.

Young lawyers also pay reduced membership dues and discounted registration rates at the Annual and Spring Meetings. If you would like more information on how to become more involved, please contact the UCC Membership Chair Penny Christophorou, at (212) 225-2516, or e-mail her at: pchristophorou@cgsh.com or Vice Chair Jacqueline Lewis, at (617) 570-1108 e-mail: jlewis@gph.com. For CFS Committee, contact its chair, Bob Zadek at Rzadek@abanet.org.

Business Law Today

Remember that you can contribute articles simultaneously to the Commercial Law Newsletter and to Business Law Today. The submission to the magazine must meet the BLT guidelines. For the details on what those guidelines are, go to the Business Law Today web site.

Still have questions?

E-mail Meg Milroy at MLMilroy@aol.com
REVISED UCC ARTICLE 9: PRESENT AND FUTURE PUBLICATIONS

By Corinne Cooper
University of Missouri-Kansas City School of Law
Kansas City, MO

New Article 9 Forms

Those interested in participating on or contributing to an ad hoc Article 9 forms committee should contact Prof. Corinne Cooper at UCC2@aol.com. The committee will develop a form book, The New Article 9: Forms, which will include annotations and/or commentary accompanying each form, and presumably would include forms on disk or CD rom. The deadline for the submission of forms will be December, 2000.

Second Edition – The New Article 9

As a separate matter, the second edition of The New Article 9, containing amendments to the text and comments made after the initial promulgation date, will be available in June, 2000. This is the first book to be published with the complete amended text and comments. We also hope to have the errata and amendments to the text and comments posted on the CFS web site, along with the most recent update on the enactment process. Those who purchased a copy of the first edition will be offered the second edition at a special price, through a direct mailing. For details, see the advertisement for this publication in this newsletter!

Subcommittee on Sales of Goods

By Thomas J. McCarthy, Chair
E.I. duPont de Nemours & Co.
Wilmington, DE

By C. Robert Beattie, Vice Chair
Oppenheimer, Wolff & Donnelly, LLP
Minneapolis, MN

As the revision process for UCC Article 2 nears its conclusion, the subcommittee will turn its attention to issues relating to the adoption of the revised article and issues not addressed in the revision process. The subcommittee meets during the annual meeting in New York from 1:00-2:00 p.m. on Monday, July 10. The meeting agenda will include consideration of the subcommittee’s role in the enactment process: possible review of comments, participation in the enactment process, upcoming program (potentially jointly with the Subcommittee on Leasing) and updating of ABA publications covering Article 2.

We will also consider the subcommittee’s role in the “post revision” world. Are there issues that were not addressed or resolved in the drafting process which should be considered by the Permanent Editorial Board? Are there recent cases or “hot issues” that should be considered and commented upon? Please join us with your ideas for future efforts.
**Joint Task Force On Revised Article 9 Enactment Process**

By Edwin E. Smith, Co-Chair
Bingham Dana LLP
Boston, MA

By E. Carolan Berkley, Co-Chair
Ballard Spahr Andrews & Ingersoll, LLP
Philadelphia, PA

By Harry C. Sigman, Co-Chair
Law Offices Of Harry C. Sigman, P.C.

The Joint Task Force on Revised Article 9 Enactment Process, jointly sponsored by the CFS and UCC Committees and by the American College of Commercial Finance Lawyers, met in Columbus on Friday, March 24. The co-chairs reported on the status of the Article 9 enactment process and solicited suggestions for members to head the effort in several remaining jurisdictions. Many of the members from the various states were present and gave reports on the progress in their states. The website on the ABA network, http://www.abanet.org/buslaw/cfs-ucc/ucc/article9/home.html, contains a link to the NCCUSL website, which keeps a running tally of enactments and introductions.

The following areas that have been raised in the enactment process were discussed:

1. **Consumer Compromise Issue.** We received permission from Consumers Union to link to its website describing the consumer compromise.

2. **Structured Settlements.** The structured settlement industry has raised concerns regarding the applicability of Revised Article 9 and the broad anti-assignment provisions of 9-406 and 9-408. Many of those concerns have been addressed in a revised Enactment Guide also posted at the website. Guidance is provided that clarifies that Revised Article 9 continues to exclude from its coverage an assignment of a claim for wages, salary or other compensation of an employee, transfers of an interest in or assignment of a claim under a policy of insurance other than an assignment by or to a health-care provider of a health care insurance receivable, and an assignment of a claim arising in tort other than a commercial tort claim. Specific guidance is given with respect to structured settlements and the anti-assignment provisions of 9-406 and 9-408.

3. **Bond Counsel.** We were alerted to concerns being raised by bond counsel in a number of states as to coverage of bond transactions by new Article 9. We will follow the process by monitoring the National Association of Bond Lawyers website.

The Task Force is scheduled to meet in New York on Sunday morning, July 9, from 8:00 a.m. to 9:00 a.m. We will report on the progress made in additional states and any additional issues that have arisen with respect to enactment of Revised Article 9. In addition, the co-chairs will present a report on Revised Article 9 and the enactment process at the Uniform Commercial Code Committee meeting scheduled from 2 p.m. to 4 p.m. on Saturday, July 8.

In addition to the Task Force website, which is available to all, much of the activity of the Task Force goes on behind the scenes. Questions received by members from groups working on Revised Article 9 in various states are addressed from time to time and information gleaned from the process in other states is shared where helpful.

All with an interest in Revised Article 9 are invited to attend the meeting in New York or to contact one of the Co-Chairs: Ed Smith smitheebingham.com, Carolan Berkley, berkleyballardspahr.com, or Harry Sigman hcsigmanaol.com
Subcommittee On UCC Article 1

By Sarah Howard Jenkins, Chair
University of Arkansas at Little Rock
Little Rock, AR

Fred H. Miller, Vice-Chair
University of Oklahoma Law Center
Norman, OK

David V. Snyder, Recorder
Cleveland-Marshall College of Law
Cleveland State University
San Diego, CA

Spring Meeting:
Recommendation on Constitutional Issue

At its spring meeting in Columbus, the Subcommittee on Article 1 concluded its consideration of how to preserve a party’s constitutional right to trial by jury under the UCC. At several meetings over the past three years, the subcommittee debated the constitutional issues surrounding the right to trial by jury. Deliberation included reviewing relevant scholarship and opposing views of several subcommittee members and assessing the merits of a proposed draft provision. Of concern were current sections 1-201(10), 4A-202(c), and 5-108(e). Each assigns particular issues to the court, rather than the jury. Because some of these issues may involve matters of fact, concerns were raised about a potential conflict with state and (in diversity cases) federal constitutional provisions that guarantee a right to a jury trial on issues of fact.

The subcommittee was not only concerned with a party’s constitutional rights but also the integrity of the UCC and the increasing possibility of non-uniform enactment. Members argued strongly that the UCC should not fall afoul the Constitution. It was also noted that at least three states (Alabama, New Jersey, and Wyoming) have made non-uniform changes to Section 5-108(e) of Revised Article 5 because of this issue, and the issue has arisen in other states still considering adoption.

As a result of its deliberations, the subcommittee voted to recommend to the Revised Article 1 Drafting Committee that the comments to Revised Section 1-103, current Section 1-102, include language that encourages a construction of the provisions of the UCC that makes available a reasonable construction consistent with a party’s constitutional rights, notwithstanding any apparently contrary provisions elsewhere in the UCC.

Spring Meeting: Unconscionability Provision for Article 1 Terms

The subcommittee also discussed the need, if any, to include a provision on unconscionability for policing Article 1 terms. This discussion raised the more general question of how Article 1 terms should be policed. The “manifestly unreasonable” test was discussed, but the main inquiry into that standard was left to the July meeting.

Summer Meeting: International Initiatives; Policing Article 1 Terms

The two principal items on the agenda this summer are:

♦ Section 1-103: coordinating international law initiatives with the UCC; and

♦ The “manifestly unreasonable” test: whether it is a sufficient tool for policing Article 1 terms.

Section 1-103, which has appeared on the agenda before, necessarily raises a number of
issues because it states a rule of simultaneous supplementation ("the principles of law and equity . . . shall supplement [the UCC]") and preemption ("unless displaced by the particular provisions of [the UCC]"). A number of international initiatives could fall in the crossfire of this provision, especially since they often lack the force of ordinary law. Important multinational projects such as the UNIDROIT Principles for International Commercial Contracts (Rome 1994), for instance, are purportedly available for adoption by agreement, but some of those principles are arguably displaced by the Code. Compare, e.g., UNIDROIT art. 1.2 (no writing required) with UCC §§ 1-206, 2-201 (statutes of frauds); cf. UNIDROIT art. 1.4 (preserving mandatory rules of "national, international or supranational origin"); Draft § 1-301 note a (parties may choose UNIDROIT principles by agreement under Draft § 1-302).

On the other hand, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) has force of its own as a self-executing treaty; it therefore preempt[s] the UCC rather than the other way around. However, the parties may opt out of the Convention and opt in to the UCC. If parties opt out of the Convention and opt in to the UCC, does the reference to "law merchant" in current Section 1-103 trigger resort to the UNIDROIT Principles or similar multinational projects for supplementation of UCC rights and remedies? The potential for the coordination of these international issues is the subject for subcommittee discussion.

The other topic is the "manifestly unreasonable" test, by which a number of agreed terms are to be judged under the December 1999 draft. See Draft Sections 1-201(b)(30) (interest rate), 1-302(b) (agreed standards of good faith, diligence, reasonableness, care, and timing). The source for this test is apparently section 1-102 of the current UCC, but the discussion at the Columbus meetings raised questions on whether this formulation is adequate. Clauses that permit acceleration at will were also mentioned in this context. See Draft Section 1-309, current Section 1-208. These questions will receive further attention this summer.

The subcommittee will convene at the ABA annual meeting in New York on Sunday, July 9, from 4:00 to 5:00 p.m.

Summer Program: Controversy over Choice of Law

The controversy over choice of law, which originated in then-Article 2B, has now arrived in Article 1, and a distinguished panel will discuss the issue. Draft Section 1-301 allows parties in non-consumer transactions to choose the law that will apply "whether or not the transaction bears a relation to the State or [in an international transaction] country designated." This provision allows parties broad contractual freedom, but it is arguably contrary to the rule in the Restatement. See Restatement (Second) of Conflicts of Law Section 187(2)(a) (Supp. 1989) (invalidating choice of law in some instances if "the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties choice"). When a provision in then-Article 2B was subjected to a hostile motion at the May 1998 meeting of the American Law Institute, the house was split. Professors Linda Rusch, chair of the UCC Committee, and William Woodward, an ABA advisor to the Article 1 Drafting Committee (and the proponent of the motion at the ALI), will chair a panel of experts under the heading, "Deregulating Choice of Law: The Ups and Downs of Changing the Contractual Choice of Law Rule in UCC Article 1." The discussion will take place at the New York ABA meeting on Sunday, July 9, at 10:30 a.m.
On an administrative note, David Snyder (david.snyder@law.csuohio.edu) will serve as chair of the subcommittee after the conclusion of the annual meeting. Please feel free to call on him or the other officers, Sarah Jenkins (shjenkins@ualr.edu) and Fred Miller (fmiller@ou.edu). David can be reached by phone or U.S. mail at Boston University Law School during the late summer and fall semester and at William & Mary Law School during the spring semester. Also, note that the URL for draft revisions has changed; they are now posted at www.law.upenn.edu/bll/ulc/ulc_frame.htm.

Subcommittee on Payments

By Stephanie Heller, Co-Chair
Federal Reserve Bank of New York
New York, NY

All of a sudden, we are seeing renewed vigor in the electronic payment product arena. New and old companies are touting a whole new spectrum of electronic payment and money products -- and as a group they look different from those first generation products that seemed to wither on the vine only a few years ago. What do these new payment products look like, and what has changed?

Up until just a few months ago the story was simple: the development of stored value cards was much slower than expected, the pundits were saying that consumers will not pay--not even micro-pay--for Internet content, and the credit card appeared to be king on the Internet. But a flurry of recent news articles has brought the focus to the new developers who are focusing on markets where credit cards do not work, such as person-to-person payments, teens and others without credit cards, and small merchants.

These companies include on-line gift certificate issuers such as C/Base, GiftCertificate.com and Flooz, person-to-person payment mechanisms such as PayPal and PayMe, a host of teen oriented web sites such as Rocketcash, iCanBuy and DoughNet, and multi-function marketing tools such as Money.com and Beenz. Amazon.com and eBay have gotten into the payments game to help their small merchants get payments, and now banks are joining the fun with BankOne's eMoneyMail and Wells Fargo's investment in BillPoint.

During the UCC Subcommittee on Payments meeting at the ABA Annual Meeting in New York, the Subcommittee will co-sponsor with the Electronic Commerce Payment Committee of Sci Tech, Banking Law's Subcommittee on Payments and the Cyberspace Joint Subcommittee on Electronic Financial Services a panel discussion entitled “New Payments, New Money.” A panel of new payment providers will be on hand to survey and explain first-hand the new products that are hitting the market. John Muller and Richard Field will then lead a group discussion to consider the principal legal issues raised by these types of products.

Other Business:

A portion of the meeting will be reserved to discuss other business including the recently commenced UCC Article 3/4 revision project, as well as an update on escheatment of stored value and patent protection for financial services.
On April 7-9, 2000, I attended the first meeting of the drafting committee established by the National Conference of Commissioners on Uniform State Laws to review the payment articles of the Uniform Commercial Code (Articles 3 (negotiable instruments), 4 (bank deposits and collection), and 4A (funds transfers)). The chair of the drafting committee is Ed Smith, and the reporter is Professor Ron Mann (University of Michigan). The remaining members of the committee are: Michael Houghton, Kathleen Patchel, Donald Rapson, Carlyle Ring, Paul Shupack, and Robert Tennessen.

Much of the morning of the first day of the meeting was spent discussing the scope of the drafting project. The primary task of the drafting committee is to consider whether the provisions of Subpart C of Regulation CC of the Board of Governors of the Federal Reserve System can be moved into Articles 3 and 4 of the UCC. The drafting committee will consider other issues if and only if the issue is uncontroversial or the issue is aimed at addressing systemic risk created by the current law. It was noted that this narrow scope is needed in order to keep this project on a “fast track.”

The narrow scope and fast track nature of this project is perhaps the most important message to convey to the ABA membership for at least two reasons. First, certain topics that the membership may want addressed by the drafting committee, such as electronic negotiable instruments, are not within the scope of the project because of their complexity. Second, the drafting committee is not particularly interested in suggestions from the membership on additional topics to cover given the committee’s timeline. It is therefore imperative that anyone with concerns about the scope contact me, in my role as ABA Advisor to the project, or the chair or reporter immediately if they want their concerns considered.

Rather than repeating what is in the reporter’s memorandum summarizing the actions taken at the meeting (and the initial reporter’s memorandum to the drafting committee and observers which discussed the proposed substantive changes), I will simply provide my own insights where appropriate.

**Regulation CC**

Most of the discussion concerning the Regulation CC provisions focused on understanding the history of the provisions and the way in which, for the most part, the Regulation CC provisions rely on Articles 3 and 4 as a starting point. Thus, for example, after a lengthy debate, it was agreed that the expedited return procedures required the retention of the midnight deadline concept in Article 4, and that the strict liability rule associated with the midnight deadline and the negligence rule associated with the expedited return rules should both remain. One of the few areas where the Regulation CC rule would replace the current rules in Article 3 and 4 if incorporated into the UCC is the area of settlement – the final settlement rules of Regulation CC would replace the provisional settlement rules of the UCC.

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1 A website is being developed by SMU that will contain all of the documents that are created or received by the reporter in connection with this project. As soon as the site is established, I have arranged to create a link to the site from the UCC Subcommittee on Payment’s website. Until the SMU website is established, anyone wishing to obtain a copy of the reporter’s memoranda should contact me at stephanie.heller@ny.frb.org.
As noted in the reporter’s memorandum, the committee may consider changes to the notice in lieu of return provision in Regulation CC before incorporating it into Article 4. In so doing, the committee will try to devise rules that better enable depository banks to act on notices and provide an incentive for all banks to accept image returns. The committee will also consider some amendments to 4-406 concerning images to help foster the acceptability of imaged items. The suggested changes are likely to upset banks but appeal to consumers. The committee asked for feedback from the ABA membership generally, and Consumer Advisors Task Force specifically, on these issues.

What was noticeably absent from the Regulation CC discussion was any in-depth debate as to whether it is appropriate to move the provisions of Regulation CC from Federal law to state law. The absence of any real debate on this topic may stem from the fact that Board staff had asked NCCUSL to make this change. Moreover, Board staff has indicated that it would rescind Subpart C of Regulation CC if this project is successful. If any ABA member has concerns about moving the provisions of Regulation CC into state law, they should contact the chair or the reporter, or me, immediately.

One last issue that was raised in connection with Regulation CC was whether it was desirable to provide the Board of Governors with the ability to make changes to the law in the future so that those changes are automatically incorporated into Articles 3 and 4. I believe that the reporter is drafting language to accomplish this goal and that the language will be drafted in such a way as to avoid constitutional law issues.

Price v. Neil

Although it is only briefly mentioned in the reporter’s memorandum, there was a lengthy discussion as to whether the rule of Price v. Neil, which provides that a payor bank is strictly liable for paying an unauthorized check, should be eliminated. Ultimately, the drafting committee seemed to agree that taking on this issue would cause this project to be derailed from the fast track. However, as the reporter’s memorandum indicates, the committee is considering altering the liability rules with respect to demand drafts. It is still far too early to know how this issue will be resolved both with respect to what instruments will be covered by the new rule and what the liability (and remedy) will be for a depository bank that pays an instrument that is later found to be unauthorized. For this reason, I believe that altering the rule of Price v. Neil is still on the table.

Payment and Discharge

This is an area where the drafting committee is extremely interested in the views of the membership. Article 3 currently provides that payment of a note discharges the obligation on the note only if the payment is made to a person entitled to enforce the note. Thus, if the payee transfers a note and the maker subsequently makes a payment to the original payee (rather than the transferee who is entitled to enforce the note at the time of payment), the payment is ineffective. The question being considered by the drafting committee is whether this rule should be changed (consistent with the Restatement of Mortgages) so that payment to the transferor is effective if it is made before the obligor receives notice of the transfer.

The committee appears to be somewhat divided as to whether to make this change. On the one hand, the suggested change alters what is fundamentally a negotiability law that does not appear to cause a problem. On the other hand, it is widely believed that the Article 3 rule does not reflect current practice (at least with respect to real estate notes). The drafting committee would like to have the views of the membership on the desirability
of the proposed change and the appropriate scope of the change (all notes or only real estate installment notes).

Suretyship

The reporter has been authorized to revise Article 3 so that its suretyship provisions are consistent with the Restatement of Suretyship. This will result in some substantive changes to Article 3. These changes are discussed in the reporter’s initial memorandum. Any comments on these changes would be useful to the committee.

Comparative Negligence

It is worth noting that during the discussions of the comparative negligence sections a great deal of time was spent considering whether a drawer should have a direct cause of action against a depositary bank. This issue is bound to resurface.

Electronic Communications

While the drafting committee determined not to address electronic instruments, it did agree to examine each provision of Articles 3, 4 and 4A that requires a writing to determine whether an electronic record would suffice. The drafting committee believes that additional substantive safeguards may be required if electronic records are authorized in these articles.

Good Faith

The drafting committee indicated that if it found “good faith” cases that the committee as a whole believed were clearly wrong, the committee would consider addressing this issue. However, given the committee’s strong view that it should not tinker with the definition of good faith (even in the commentary), revisions in this area are unlikely.

Ordinary Care

Several issues were raised with respect to the definition of ordinary care and automated processing. It was suggested that the provision was never intended to cover banks other than payor banks and therefore should be revised to cover only payor banks (removing references to collecting banks). There was also a suggestion to revise the provision to make clear that the phrase “by automated means” applies to the processing of a check and not the taking of a check. Finally, there was a suggestion to place in the black letter law the notion that a bank’s procedures cannot be arbitrary and capricious (even if the procedures are in line with banking practice). This is currently discussed in the commentary. All of these issues were rejected as too controversial.

A draft of the revisions and any proposed commentary is expected by mid to late summer. The next drafting committee meeting will not be held until December.

Subcommittee on Letters of Credit

By James Barnes

The Institute of International Banking Law and Practice, Inc.

Montgomery Village, MD

At the July 2000 Annual Meeting, the Letter of Credit Subcommittee will feature a presentation by former chair Jim Barnes on the English Court of Appeal decision in Banco Santander v. Banque Paribas and its effect there and elsewhere on deferred payment letters of credit, as well as its reflection of long standing English law peculiarities in dealing with beneficiary fraud.

In addition, the Subcommittee will discuss the status of UCC Article 9 revision in New York and recent decisions in New York and Texas.
on affirmative discrepancy and inconsistency claims and on precluding banks from raising such claims. This discussion will include recent ICC Banking Commission opinions on the sufficiency of various bank forms of refusal of documents and on the effect of applicant waivers of discrepancies given after an issuer has refused the documents.

**UCC Committee/CSF Committee Website**

Extensive information about the activities of the UCC Committee and the Commercial Financial Services Committee is now found on the Internet. This includes information about and materials relating to current activities of the Committees and their various subcommittees and task forces, leadership of the Committees, on-line access to various editions of the Commercial Law Newsletter, schedules and agendas for meetings, and much more. The joint home site for the two Committees is found at [http://www.abanet.org/buslaw/cfs-ucc/home.html](http://www.abanet.org/buslaw/cfs-ucc/home.html).

**HOT NEW PUBLICATION**

**ORDER YOUR COPIES NOW!!!**

**The New Article 9, Second Edition,**

*Corrinne Cooper,* Editor, *Steven O. Weise* and *Edwin E. Smith,* contributing authors, will be available by the time you receive this newsletter.

This informative, updated, “must have” reference contains all the amendments to the text and comments of revised Article 9 made after the initial promulgation date.

It is the FIRST BOOK to be published with the complete amended text and comments, and with all errors to the promulgated version corrected. Those who purchased a copy of the first edition will be offered the second edition at a special price, through direct mailing.

See the “Business Law Publications” column in this newsletter for ordering information, or visit the website: [ababooks.org](http://ababooks.org).
Every year for more than 50 years, the Commercial Finance Association (CFA), which is the principal trade association for the asset based commercial finance industry, holds a convention in the fall, featuring numerous educational programs. For the past several years, the CFS has sponsored a legal program on Friday morning of the convention.

This fall the CFA Convention will be held in New Orleans, and the CFS will sponsor a legal program on Friday, October 20, 2000. The CFA has dedicated the entire Friday convention program to e-commerce as it affects commercial finance lenders. All of the Friday programs, including the program presented by our committee, will focus on aspects of e-commerce. We have been directed to present a program addressing the legal aspects of transacting commercial finance business online.

The title of the committee’s October 20 program will be: “Taking It To The Net: Legal Aspects Of ABL Online.” Jeff Turner will moderate the program, playing the role of the CEO of a brick and mortar commercial finance company that wants to move online. The panelists, as his advisors, will give interactive counseling regarding all aspects of the process, from such start-up matters as formation and structuring of the venture, web hosting arrangements, and IP protection, through operational issues including electronic signatures, electronic contracting, electronic filing, electronic reporting and record retention, and also will address related issues such as taxation, privacy, and regulation.

Mike Maglio of Robinson & Cole LLP and John Muller of Brobeck, Phleger & Harrison LLP have been working with Jeff Turner to develop the program which promises to be an interesting interdisciplinary collaboration.

Programs and Seminars Subcommittee – Ohio

By Christopher J. Rockers
Husch & Eppenberger, LLC

Commercial Financial Services had a very exciting series of meetings and programs at the Spring Meeting in Columbus, Ohio. Almost all of our sub-committees held informative and substantive meetings.

The Committee also sponsored two very successful programs. “Surfing the Law: Real Time Business Applications of New Intellectual Property Laws” was chaired by Jim Schulwolf and Peter Munoz. This Program underscored the practical applications and impact of proposed legislation in the intellectual property area.

As always, “Commercial Law Developments - 1999” helped bring all attendees current on relevant case law developments over the past year. This program, as in years past, provided a great recap of case law developments in the commercial finance area and is a requirement for lawyers hoping to stay current on legal issues relating to commercial finance.

The Committee sponsored its first Committee Forum in Columbus. This Forum, entitled “Stuff to do Now to Get Ready for New Article 9” was presented by Jeff Turner, Bob Zadek, Meredith Jackson and Steve Weise. The panelists covered a number of practical issues
which arise in anticipation of the enactment of New Article 9.

The Annual Meeting will be held in New York on July 7 - 10, 2000 and, once again, Commercial Financial Services will provide a panoply of substantive subcommittee meetings and programs. The first program is a kick-off of the Committee’s plan to provide a series of programs and forums on fundamentals of specific aspects of commercial finance transactions. From 10:30 a.m. to 12:30 p.m. on Sunday, July 9, 2000, Marcy S. Cohen and Mike Carsella are co-chairing a program entitled “Fundamentals (and Beyond) of Cross Border Secured Lending and Securitizations.” This program promises to be very helpful to commercial finance lawyers interested in learning or reviewing the basics of international finance transactions and legal issues relating to such transactions. From 2:30 p.m. to 4:30 p.m. on Sunday, July 9, 2000 Bob Zadek will chair a presentation entitled “Lending to Lenders.” This program was presented a couple of years ago to the Commercial Finance Association and was extremely popular.

The Committee is also co-sponsoring a Presidential Showcase Program entitled “Collaboration Between Attorney and Client Through Technology.” This meeting will take place on July 10, 2000.

Looking ahead, Commercial Financial Services will, once again, meet on the Wednesday before the Commercial Finance Association’s annual meeting. This year the CFA meeting is October 18 - 20, 2000 in New Orleans, Louisiana. Each year the Committee, in addition, presents a program to the Commercial Finance Association, and this year the program will be moderated by Jeff Turner. The title of Jeff’s program, which fits the theme of all meetings presented that day to the CFA, will be “Taking it to the Net: Legal Aspects of ABL On-Line.” This program promises to be a very relevant and timely review of legal issues which will impact asset based lenders as they move to an on-line platform.

If you have any topics or issues that you would like the Committee to address, or are interested in presenting to the Committee or any of its subcommittees, please contact me.

**Loan Workouts Subcommittee**

By Lawrence Peitzman, Chair
Peitzman, Glassman & Weg LLP,
Los Angeles

By Caroline C. Galanty, Vice-Chair
Assistant General Counsel,
Bank of America N.A., Los Angeles

The Subcommittee’s meeting in Columbus was devoted to an excellent presentation on the topic “Secrets and Liens: How PACA, RICO, IRS, Hot Goods, and Other Hidden Interests Can Ruin Your Workout, and What You Can Do About It.” The speakers were Peter S. Clark, II of Reed Smith Shaw & McClay LLP, Philadelphia, and Douglas R. Edwards, Senior Vice President and Deputy General Counsel of First Union Corporation, Charlotte. Subcommittee vice-chair Caroline Galanty moderated.

For reference, some of the numerous important topics the panel discussed are summarized in this article.

After discussing the myriad of more conventional problems that could arise from “hidden” interests under Article 9 of the UCC (misindexed financing statements, filings under trade names, possession of collateral owned by others, etc.), Messrs. Clark and Edwards discussed less conventional problems arising under, among other statutes, The Perishable Agricultural Commodities Act (PACA), RICO, CERCLA, and The Fair Labor Standards Act.
Mr. Edwards explained that PACA, enacted in 1930 and substantially amended in 1984, provides a statutory trust for the benefit of unpaid suppliers of perishable agricultural commodities to commission merchants, dealers and brokers of such commodities. 7 U.S.C. § 499e(c). Despite its long history, PACA, according to Mr. Edwards, still raises numerous problems of interpretation. Does it apply to restaurants, as some cases suggest, raising the slippery-slope problem of application to school cafeterias and the like? What is a “perishable” commodity? When is the character of the agricultural product so altered that PACA ceases to apply? (Messrs. Clark and Edwards noted in their materials that products that underwent a fundamental change, such as applesauce, are excluded. One ABA member, attending the presentation, started a debate by asking if the statute would apply to candied apples.)

Mr. Edwards noted that a secured lender, finding itself in a workout with a financially-troubled borrower, might be rudely surprised to find that its security interest was subordinate to the interests of a PACA vendor and that, in fact, a secured lender might even be required to disgorge payments received under a secured lending facility unless the lender could establish that it gave value and had no actual or constructive knowledge of any breach of its PACA obligations. Mr. Edwards also discussed The Packers and Stockyards Act, which gives rise to similar issues.

Mr. Clark discussed a variety of statutes, including CERCLA, the Comprehensive Response, Compensation and Liability Act that provides the federal government with a vehicle for recovering costs incurred in an environmental cleanup. He explained that, although CERCLA liens do not arise automatically and do not subordinate prior perfected security interests, they are nevertheless considered “hidden” because a new lender may be unaware that a CERCLA lien exists. This could make it more difficult for a financially troubled borrower to refinance its way out of a workout.

RICO, the Racketeer Influenced and Corrupt Organizations Act, Mr. Clark explained, could also threaten a workout because, in addition to criminal sanctions, RICO imposes forfeiture penalties, and no lender wants to find that what it thought was its collateral has been seized by the federal government. This can be particularly irksome since the interest of the government under RICO relates back to the date of the illegal acts. 18 U.S.C. §§ 1963-64. Especially in the context of a workout, Mr. Clark suggested, a lender might want to perform an audit of the debtor’s books and records and seek other assurances (including representations in a workout agreement and officer’s certification) that the borrower has never been the subject of a criminal investigation.

Among the other “hidden interests” discussed by Messrs. Clark and Edwards were mechanics’ liens and tax liens. With respect specifically to railroads, Mr. Edwards described the so-called “interline trust fund” doctrine, which relates to the situation in which one railroad collects shipping charges for freight carried over a series of different railroads. The funds so collected could be subject to a “trust” in favor of all the railroads over which the freight was carried under In re Penn Central Transportation Co., 486 F.2d 513 (3d Cir. 1973), cert. denied, 415 U.S. 990 (1974). Mr. Clark explained that the basic concept could have implications for other situations (such as oil and gas pipelines) in which goods were carried through a series of properties owned by different parties, citing, among other cases, In re Columbia Gas Sys., Inc., 997 F.2d 1039 (3d Cir. 1993).

Finally, Mr. Clark discussed the Fair Labor Standards Act (FLSA), which gives rise to the
concept of “hot goods.” 29 U.S.C. § 215(a)(1). This statute prohibits any person from introducing into interstate commerce so-called “hot goods” that were produced in violation of the overtime and minimum wage provisions of the FLSA. Although the claim of employees with respect to “hot goods,” Mr. Clark explained, is not superior to a secured creditor’s lien, the lender’s right to dispose of its collateral may be impaired if its collateral consists of “hot goods.” Because the statute contains an exemption for “bona fide purchasers,” Mr. Clark suggested that, especially in the workout context, where the lender already knows that its borrower is under financial pressure, the lender should have the borrower represent and warrant that it is complying with the FLSA.

Suggestions for presentations at future ABA meetings or other subcommittee projects would be welcomed and should be sent to either the subcommittee chair, Lawrence Peitzman [lpeitzman@pgwlaw.com], or vice-chair, Caroline C. Galanty [caroline.galanty@bankofamerica.com].

Loan Documentation Subcommittee

By Robert P. Handler, Co-Chair
NationsCredit Commercial Funding
Chicago, IL

By Jeffrey M. Rosenthal, Co-Chair
Reed, Smith, Shaw, McClay
Princeton, NJ

At the annual meeting in New York, the Loan Documentation Subcommittee will be doing a program entitled “Back to Basics - The Loan and Security Agreement Under Current Law and Revised Article 9”. The discussion will be led by Paul Shur, Esq., a partner in the Princeton, New Jersey law firm Smith, Stratton, Wiese, Herr & Brennan. This discussion will serve as a refresher of various aspects of that central document in most loan transactions and look at some changes which will take place once Revised Article 9 becomes effective.

Intellectual Property Financing Subcommittee

By James C. Schulwolf, Co-Chair
Pepe & Hazard
Hartford, CT

By Peter S. Munoz, Co-Chair
Crosby Heafy Roach & May
San Francisco, CA

The Intellectual Property Financing Subcommittee was at the forefront of program activity in Columbus and has an exciting meeting planned for New York. In Columbus, approximately 100 people attended our joint meeting with the Subcommittee on Loan Documentation at which a distinguished panel comprised of Tim Grady, Jim Chadwick, Bobbi Gomez, Ron Marshall and Gerry Munitz discussed “The Curious Case of Microzon.com,” a case study of the lifecycle and issues surrounding a company whose lifeblood is intellectual property. The following day, we led a program entitled “Surfing the Law,” at which an equally distinguished panel comprised of Jeff Turner, Prof. Tom Ward, Gordon Pence and Prof. Jean Braucher discussed practical applications and implications of UCITA as well as proposed laws to rationalize perfection of security interests in intellectual property. Materials for both sessions are or will shortly be available at the CFS website.

In New York, our program will focus on the Aerocon case, which was decided in late December and took a different view than did Peregrine and Avalon. We are honored to have as two of our panelists the Hon. Leslie Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, who
decided Aerocon, as well as Shawn Christiansen of Buchalter Nemer, attorney for the lender in the case. We expect to add a third panelist who will focus on the issue from the point of view of the trustee. The program will take place on Sunday, July 9th from 1:00 - 2:30 P.M. The meeting room has yet to be announced. This promises to be an exciting discussion concerning a case of great current interest, and we invite you all to join us in New York.

Secured Lending Subcommittee

By Jeffrey S. Turner, Co-Chair
Brobeck, Phleger & Harrison LLP
Los Angeles, CA

By Meridith Jackson, Co-Chair
Irell & Manella LLP
Los Angeles, CA

The Secured Lending Subcommittee met jointly with the Secured Transactions Subcommittee of the UCC Committee in Columbus, Ohio, at 2 p.m. on the afternoon of Friday, March 24, 2000. Harry Sigman led a discussion of the complexities of the transition rules in Part 7 of Revised Article 9. Thereafter, Peter Carson discussed various issues pertaining to security interests in deposit accounts, both under Current Article 9/Common Law and under Revised Article 9. Finally, Meredith Jackson discussed the deposit account provisions of Revised Article 9 as they pertain to securitization transactions.

The Secured Lending Subcommittee will next meet in New York at 9 am on Sunday, July 9, jointly with Secured Transactions. At that meeting, Meredith Jackson will discuss the risks of lending to an inadvertent investment company, and how a lender can protect itself. Marsha Simms will discuss the structuring and tax issues relating to the pledge of stock of foreign corporations. Bradley Smith will focus on the intersection of the definitions of accounts, payment intangibles and general intangibles under current and revised Article 9.

Following the July meeting, Meredith Jackson will assume the Chairship of the Subcommittee, Jeff having completed a term of several years. We welcome input, ideas, suggestions, topics, materials, and volunteers!

Master Commercial Finance Calendar Subcommittee

By Michael F. Maglio, Chair
Robinson & Cole LLP
Hartford, CT

The Master Commercial Finance Calendar project has been completed and the calendar can now be accessed through the link located on the UCC/CFS Committee Joint Website below the listings for the commercial financial services committee. The Calendar posts meetings, seminars and other events of interest to commercial finance attorneys. The Calendar posts each event on a calendar page in the appropriate date box(es). Simply “click” on the event and view a details screen which includes a brief description of the program, a list of presenters and, in most cases, the URL of the sponsoring organization to facilitate electronic registration. A “search” option is available to enable the user to search by event name, sponsoring organization and/or name of presenter.

The Calendar URL is:
https://extranet.rc.com/aba/pubCalendar.asp

To make the Calendar as comprehensive and useful as possible, the Subcommittee welcomes any and all suggestions from the membership of events (be they national, regional or local) for Calendar inclusion. Please
Creditors’ Rights Subcommittee

By Catherine E. Bauer, Chair
Bank of America, N.A.
Legal Department
Los Angeles, CA

The Creditors’ Rights Subcommittee is very pleased to be co-sponsoring a CLE program with the Probate and Trust Law Committee of the Section of Real Property entitled “Ethical Considerations and Attorney Liability for Asset Protection Planning.” The program will be held on Monday, July 10, 2000, 10:30-11:45 a.m.

We have an impressive panel discussing this very timely subject, including Bankruptcy Judge Margaret Mahoney from Mobile, Alabama and ethics Professor Bruce Green from Fordham Law School. We expect a lively debate; please join us!

The Subcommittee will also meet at the Marriott Marquis on Friday, July 8, 2000 at 2:00 for a discussion of “Class Actions in Bankruptcy and Other New Bankruptcy Developments.” Judge Mahoney is joining us for this meeting and, in addition to hearing her thoughts on the bankruptcy class action trend, we expect a very timely discussion of important new cases and maybe (a pretty big maybe) even new legislation.

We welcome everyone to attend or meetings, and are always welcoming new members. Feel free to call or e-mail if you have any questions.

Internet Services Subcommittee

By Timothy E. McAllister, Chair
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
Boston, MA

Jim Chadwick has now been appointed Vice Chair of the Subcommittee. His e-mail address is JChadwick@PattonBoggs.com

Following the Spring Meeting in Columbus, we are in the process of updating the CFS Committee’s website. We plan to post online many of the materials that were distributed at the Spring Meeting’s programs and meetings.

Suggestions for improving the site are always welcome. In particular, we would welcome any additional suggestions for the “links” section. If you’ve discovered some valuable resources online that would be of interest to other members of the Committee, please let us know.

International Financial Services Subcommittee

By Marcy S. Cohen, Co-Chair
Westdeutsche Landesbank Girozentrale (WestLB)
New York, NY

By Michael Carsella, Co-Chair
LaSalle Business Credit, Inc.
Chicago, IL

Our subcommittee will lead an exciting program at the Annual Meeting of the Association in New York City on July 9, 2000 from 10:30-12:30. We will co-sponsor the event with the Uniform Commercial Code and Developments in Business Financing Committees.
The program is entitled “Fundamentals (and Beyond) of Cross Border Secured Lending and Securitizations”. Our distinguished panel will present a checklist of issues encountered in these transactions and then discuss the pitfalls to look out for and offer solutions and strategies. We will present a hypothetical case and use it both as a demonstration of how these transactions are structured and as a backdrop for further discussion. We anticipate covering the following issues: transaction structuring; due diligence concerns; perfection and priority of liens; bankruptcy concerns; accounting and tax; the use of derivative products to minimize currency and credit risk; special purpose vehicle concerns; credit enhancement techniques; and rating agency considerations.

Panelists include: Conrad Bahlke (Schulte Roth & Zabel), Penelope L. Christophorou (Cleary, Gottlieb, Steen & Hamilton), Martin Fingerhut (Blake, Cassels & Graydon), Casimir Mazurkiewicz (Congress Financial Corp.), and Arlene Elgart Mirsky (Sills, Cummis, Radin, Tischman, Epstein & Gross). The panel will be moderated by Michael Carsella (La Salle Business Credit, Inc.) and Marcy S. Cohen (WestLB). The program will feature lively discussion and an opportunity for active audience participation. We hope you will be able to join us in New York City for this event.
UCC SCORECARD -- REVISIONS

ARTICLE 1 - GENERAL PROVISIONS

Latest Draft: November, 1999
Status: Drafting Committee’s next meeting is not scheduled.
UCC Committee Contact: Sarah Howard Jenkins (501) 324-9937 or Fred Miller (405) 325-4699.

ARTICLE 2 – SALES AND ARTICLE 2A-LEASES

Status: Drafting Committee’s next meeting February 4-6, 2000.
UCC Committee Contact: Thomas J. McCarthy (302) 892-7906.

ARTICLE 5 - LETTERS OF CREDIT

Latest Revision 1995. Revised Article 5 has been adopted by 44 states.
UCC Committee Contact: James G. Barnes (312) 861-2854.

ARTICLE 7 - DOCUMENTS OF TITLE

Latest Draft: No draft.
Status: NCCUSL has asked the Article 7 Task Force to prepare a report on a revision and the Article 7 Task Force hopes to have a report to NCCUSL by Summer 2000.
UCC Committee Contact: Drew L. Kershen (405) 325-4784.

ARTICLE 8 – INVESTMENT SECURITIES

Latest Revision 1995: Revised Article 8 has been adopted by all states other than Rhode Island and South Carolina.
UCC Committee Contact: Sandra M. Rocks (212) 225-2780.

ARTICLE 9 – SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

Latest Revision 1999: Revised Article 9 is being presented to the states for adoption. Listed on the next page is a state by state update, as of 5/10/00.
UCC Committee Contact: Steven O. Weise (213) 244-7831.

UNIFORM ELECTRONIC TRANSACTIONS ACT
Final Version 1999: UETA was approved by NCCUSL in July 1999 and has been adopted by at least two states.
UCC Committee Contact: C. Robert Beattie, (612) 607-7000

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT
Final Version 1999: UCITA was approved by NCCUSL in July 1999 and is available to the states for adoption.
UCC Committee Contact: Donald A. Cohn (302) 773-3521.

UNIFORM CONSUMER LEASES ACT
Latest Draft: September 1999
Status: Last meeting was September 1999. Drafting Committee’s next meeting not yet scheduled.
UCC Committee Contact: Michelle Hughes (757) 499-8800.
## STATE ENACTMENTS OF REVISED ARTICLE 9 AS OF MAY 10, 2000

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* Includes 2000 technical amendments.
ABA BUSINESS LAW SECTION PUBLICATIONS

♦ THE PORTABLE UCC: SECOND EDITION, edited by Corinne Cooper

The Portable UCC is in a compact, convenient size, and includes the complete text of the UCC as amended through 1995, including revised Articles 5 and 8. Best of all, it has an comprehensive and easy to use subject index. (Priced from $17.95 to $29.95, depending on the number of copies.)

♦ THE PORTABLE BANKRUPTCY CODE 2000, edited by Sally M. Henry

This compact, up-to-date reference will provide you with quick and easy access to relevant Code and Bankruptcy Rule provisions, U.S. Trustee Guidelines, Selected Rules of Civil Procedure and Federal Rules of Evidence. (Priced from $17.95 to $29.95, depending on the number of copies.)

♦ THE NEW ARTICLE 9, SECOND EDITION; edited by Corinne Cooper; Steven O. Weise and Edwin E. Smith, contributing authors.

This timely, handy guide provides a clear, in-depth explanation of Revised UCC Article 9, has been updated and includes with the full 1998 text and Official Comments, along with the complete text of current Article 9 (1995) for comparison. PLUS it is the first book to be published with the compete amended text and comments, including the text and comments made after the initial promulgation date, with all errors to the promulgated version corrected. With chapters by Steven O. Weise, the ABA Advisor to the Revised Article 9 Drafting Committee, and Edwin E. Smith, a member of the Drafting Committee, this book has all you need, including: a plain-English overview of Revised Article 9, a checklist of issues to consider as you move to the new rules, a detailed analysis of the complex transition provisions (set out in timelines), extensive charts comparing significant provisions of current and Revised Article 9, and a comprehensive index, with particular attention to new terms and new rules. When ordering, please note: the product code for this new edition is 5070360.

♦ THE ABCS OF THE UCC, Series edited by Amelia Boss

These primers on the UCC articles are written for both practitioners and students. Each book avoids footnotes and convoluted discussions and explains just the basic UCC concepts and operation of the Code, in a simple, straightforward style. ($29.95 each for Business Law Section members; $14.95 for students.)

ARTICLE 1: GENERAL PROVISIONS, by Fred H. Miller and Kimberly J. Cilke

ARTICLE 2: SALES, by Linda J. Rusch and Henry D. Gabriel

ARTICLE 2A: LEASES, by Amelia H. Boss and Stephen T. Whelan

ARTICLE 3: NEGOTIABLE INSTRUMENTS AND ARTICLE 4: BANK DEPOSITS AND COLLECTIONS, by Stephen C. Veltri

ARTICLE 4A: FUNDS TRANSFERS, by Thomas C. Baxter, Jr. and Stephanie A. Heller

ARTICLE 5: LETTERS OF CREDIT, by James G. Barnes, James E. Byrne and Amelia H. Boss

ARTICLE 8: INVESTMENT SECURITIES, by Sandra M. Rocks and Carl S. Bjerre

ARTICLE 9: SECURED TRANSACTIONS, by Russell A. Hakes

♦ RELATED AND SUPPLEMENTARY CONSUMER LAW, by Fred H. Miller and Cindy Hastie

♦ A COMMERCIAL LAWYER’S TAKE ON THE ELECTRONIC PURSE: AN ANALYSIS OF COMMERCIAL LAW ISSUES ASSOCIATED WITH STORED-VALUE CARDS AND ELECTRONIC MONEY, by Stephanie Heller, Thomas Baxter, Jr. and the Task Force on Stored Value Cards

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# UCC SCORECARD

50 State Survey of Adoptions of Revised Official Text of the UCC
AS OF May 9, 2000

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Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to John McCabe and Katie Robinson at the National Conference of Commissioners on Uniform State Laws for their help in compiling the information above. These revisions are based on the information available as of May 9, 2000.

1 South Dakota has adopted only 1987 Official Text without the 1990 Amendments.

2 States which have repealed Article 6 are identified by indicating “Repeal” next to the state name; states adopting the revisions suggested in Alternative B to the 1989 Official Text are identified by indicating “Revise” next to the state name.

3 In addition to the enactments noted, Puerto Rico has only adopted the following Articles: Article 1, Article 4A, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.
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