

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963



ENROLLED

HOUSE BILL No. 3

(By Mr. Ford and Mrs. Bush)



PASSED March 6, 1963

In Effect July 1, 1964 ~~Postage~~



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JOE F. BUNDETT
SECRETARY OF STATE

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House Bill No. 3

(By MR. FORD and MR. BUCH)

[Passed March 6, 1963; in effect July 1, 1964.]

AN ACT to repeal sections forty-one through sixty-two, inclusive, article one, chapter thirty-one; article four-a, chapter thirty-one; articles ten-a and ten-b, chapter thirty-eight; sections eighteen through twenty-one, inclusive, article eleven, chapter thirty-eight; articles fourteen and fifteen, chapter thirty-eight; sections seven, eleven and twelve, article one, chapter forty; articles two and three, chapter forty; chapter forty-six; article five, chapter forty-seven; and section one, article eight, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapter fifteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, sometimes referred to as article four-a, chapter thirty-one of said code, as amended by chapter twenty-one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-nine, and as further amended by chapter twenty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five; and to enact in lieu thereof a new chapter forty-six of said code, being and constituting the uniform commercial code relating to certain commercial transactions and the rights, obligations, remedies and practices thereunto appertaining.

Be it enacted by the Legislature of West Virginia:

That sections forty-one through sixty-two, inclusive, article one, chapter thirty-one; article four-a, chapter thirty-one; ar-

ticles ten-a and ten-b, chapter thirty-eight; sections eighteen through twenty-one, inclusive, article eleven, chapter thirty-eight; articles fourteen and fifteen, chapter thirty-eight; sections seven, eleven and twelve, article one, chapter forty; articles two and three, chapter forty; chapter forty-six; article five, chapter forty-seven; and section one, article eight, chapter forty-seven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter fifteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, sometimes referred to as article four-a, chapter thirty-one of said code, as amended by chapter twenty-one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-nine, and as further amended by chapter twenty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five, be repealed; and that a new chapter forty-six of said code be enacted to read as follows:

CHAPTER 46. UNIFORM COMMERCIAL CODE

Article

- 1. General Provisions.**
- 2. Sales.**
- 3. Commercial Paper.**
- 4. Bank Deposits and Collections.**
- 5. Letters of Credit.**
- 6. Bulk Transfers.**
- 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.**
- 8. Investment Securities.**
- 9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.**
- 10. Effective Date and Repealer.**

Article 1. General Provisions.

PART 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THIS CHAPTER

- Section 1-101. Short Title.**—This chapter shall be
2 known as and may be cited as Uniform Commercial Code.

Sec. 1-102. Purposes; Rules of Construction; Variation

2 **by Agreement.**—(1) This chapter shall be liberally con-
3 strued and applied to promote its underlying purposes
4 and policies.

5 (2) Underlying purposes and policies of this chapter
6 are

7 (a) to simplify, clarify and modernize the law gov-
8 erning commercial transactions;

9 (b) to permit the continued expansion of commercial
10 practices through custom, usage and agreement of the
11 parties;

12 (c) to make uniform the law among various jurisdic-
13 tions.

14 (3) The effect of provisions of this chapter may be
15 varied by agreement, except as otherwise provided in
16 this chapter and except that the obligations of good faith,
17 diligence, reasonableness and care prescribed by this
18 chapter may not be disclaimed by agreement but the
19 parties may by agreement determine the standards by
20 which the performance of such obligations is to be meas-
21 ured if such standards are not manifestly unreasonable.

22 (4) The presence in certain provisions of this chapter
23 of the words “unless otherwise agreed” or words of
24 similar import does not imply that the effect of other pro-
25 visions may not be varied by agreement under subsec-
26 tion (3).

27 (5) In this chapter unless the context otherwise re-
28 quires

29 (a) words in the singular number include the plural,
30 and in the plural include the singular;

31 (b) words of the masculine gender include the feme-
32 nine and the neuter, and when the sense so indicates
33 words of the neuter gender may refer to any gender.

Sec. 1-103. Supplementary General Principles of Law

2 **Applicable.**—Unless displaced by the particular provisions
3 of this chapter, the principles of law and equity, includ-
4 ing the law merchant and the law relative to capacity to
5 contract, principal and agent, estoppel, fraud, misrepre-
6 sentation, duress, coercion, mistake, bankruptcy, or other
7 validating or invalidating cause shall supplement its
8 provisions.

Sec. 1-104. Construction Against Implicit Repeal.—This
2 chapter being a general act intended as a unified coverage
3 of its subject matter, no part of it shall be deemed to be
4 impliedly repealed by subsequent legislation if such con-
5 struction can reasonably be avoided.

**Sec. 1-105. Territorial Application of this Chapter;
2 Parties' Power to Choose Applicable Law.**—(1) Except as
3 provided hereafter in this section, when a transaction
4 bears a reasonable relation to this state and also to an-
5 other state or nation the parties may agree that the law
6 either of this state or of such other state or nation shall
7 govern their rights and duties. Failing such agreement
8 this chapter applies to transactions bearing an appropri-
9 ate relation to this state.

10 (2) Where one of the following provisions of this
11 chapter specifies the applicable law, that provision gov-
12 erns and a contrary agreement is effective only to the
13 extent permitted by the law (including the conflict of
14 laws rules) so specified:

15 Rights of creditors against sold goods. Section 2-402.

16 Applicability of the article on Bank Deposits and Col-
17 lections. Section 4-102.

18 Bulk transfers subject to the article on Bulk Transfers.
19 Section 6-102.

20 Applicability of the article on Investment Securities.
21 Section 8-106.

22 Policy and scope of the article on Secured Transactions.
23 Sections 9-102 and 9-103.

Sec. 1-106. Remedies to Be Liberally Administered.—
2 (1) The remedies provided by this chapter shall be
3 liberally administered to the end that the aggrieved party
4 may be put in as good a position as if the other party had
5 fully performed but neither consequential or special nor
6 penal damages may be had except as specifically provided
7 in this chapter or by other rule of law.

8 (2) Any right or obligation declared by this chapter
9 is enforceable by action unless the provision declaring it
10 specifies a different and limited effect.

**Sec. 1-107. Waiver or Renunciation of Claim or Right
2 After Breach.**—Any claim or right arising out of an al-

3 leged breach can be discharged in whole or in part with-
4 out consideration by a written waiver or renunciation
5 signed and delivered by the aggrieved party.

Sec. 1-108. Severability.—If any provision or clause of
2 this chapter or application thereof to any person or cir-
3 cumstances is held invalid, such invalidity shall not affect
4 other provisions or applications of this chapter which can
5 be given effect without the invalid provision or applica-
6 tion, and to this end the provisions of this chapter are
7 declared to be severable.

Sec. 1-109. Section Captions.—Section captions are
2 parts of this chapter.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec. 1-201. General Definitions.—Subject to additional
2 definitions contained in the subsequent articles of this
3 chapter which are applicable to specific articles or parts
4 thereof, and unless the context otherwise requires, in this
5 chapter:

6 (1) “Action” in the sense of a judicial proceeding in-
7 cludes recoupment, counterclaim, set-off, suit in equity and
8 any other proceedings in which rights are determined.

9 (2) “Aggrieved party” means a party entitled to re-
10 sort to a remedy.

11 (3) “Agreement” means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance as provided in this
15 chapter (Sections 1-205 and 2-208). Whether an agree-
16 ment has legal consequences is determined by the pro-
17 visions of this chapter, if applicable; otherwise by the
18 law of contracts (Section 1-103). (Compare “Contract”).

19 (4) “Bank” means any person engaged in the busi-
20 ness of banking.

21 (5) “Bearer” means the person in possession of an
22 instrument, document of title, or security payable to
23 bearer or indorsed in blank.

24 (6) “Bill of lading” means a document evidencing the
25 receipt of goods for shipment issued by a person engaged

26 in the business of transporting or forwarding goods, and
27 includes an airbill. "Airbill" means a document serving
28 for air transportation as a bill of lading does for marine
29 or rail transportation, and includes an air consignment
30 note or air waybill.

31 (7) "Branch" includes a separately incorporated for-
32 eign branch of a bank.

33 (8) "Burden of establishing" a fact means the burden
34 of persuading the triers of fact that the existence of the
35 fact is more probable than its non-existence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights or
39 security interest of a third party in the goods buys in ordi-
40 nary course from a person in the business of selling goods
41 of that kind but does not include a pawnbroker. "Buy-
42 ing" may be for cash or by exchange of other property or
43 on secured or unsecured credit and includes receiving
44 goods or documents of title under a pre-existing contract
45 for sale but does not include a transfer in bulk or as secu-
46 rity for or in total or partial satisfaction of a money debt.

47 (10) "Conspicuous": A term or clause is conspicuous
48 when it is so written that a reasonable person against
49 whom it is to operate ought to have noticed it. A printed
50 heading in capitals (as: NON-NEGOTIABLE BILL OF LADING)
51 is conspicuous. Language in the body of a form is "con-
52 spicuous" if it is in larger or other contrasting type or
53 color. But in a telegram any stated term is "conspicuous".
54 Whether a term or clause is "conspicuous" or not is for
55 decision by the court.

56 (11) "Contract" means the total legal obligation which
57 results from the parties' agreement as affected by this
58 chapter and any other applicable rules of law. (Compare
59 "Agreement".)

60 (12) "Creditor" includes a general creditor, a secured
61 creditor, a lien creditor and any representative of credi-
62 tors, including an assignee for the benefits of creditors, a
63 trustee in bankruptcy, a receiver in equity and an execu-
64 tor or administrator of an insolvent debtor's or assignor's
65 estate.

66 (13) "Defendant" includes a person in the position of
67 defendant in a cross-action or counterclaim.

68 (14) "Delivery" with respect to instruments, docu-
69 ments of title, chattel paper or securities means voluntary
70 transfer of possession.

71 (15) "Document of title" includes bill of lading, dock
72 warrant, dock receipt, warehouse receipt or order for the
73 delivery of goods, and also any other document which in
74 the regular course of business or financing is treated as ad-
75 equately evidencing that the person in possession of it is
76 entitled to receive, hold and dispose of the document and
77 the goods it covers. To be a document of title a document
78 must purport to be issued by or addressed to a bailee and
79 purport to cover goods in the bailee's possession which
80 are either identified or are fungible portions of an identi-
81 fied mass.

82 (16) "Fault" means wrongful act, omission or breach.

83 (17) "Fungible" with respect to goods or securities
84 means goods or securities of which any unit is, by nature
85 or usage of trade, the equivalent of any other like unit.
86 Goods which are not fungible shall be deemed fungible
87 for the purposes of this chapter to the extent that
88 under a particular agreement or document unlike units
89 are treated as equivalents.

90 (18) "Genuine" means free of forgery or counterfeit-
91 ing.

92 (19) "Good faith" means honesty in fact in the con-
93 duct or transaction concerned.

94 (20) "Holder" means a person who is in possession of
95 a document of title or an instrument or an investment
96 security drawn, issued or indorsed to him or to his order
97 or to bearer or in blank.

98 (21) To "honor" is to pay or to accept and pay, or
99 where a credit so engages to purchase or discount a draft
100 complying with the terms of the credit.

101 (22) "Insolvency proceedings" includes any assign-
102 ment for the benefit of creditors or other proceedings
103 intended to liquidate or rehabilitate the estate of the per-
104 son involved.

105 (23) A person is "insolvent" who either has ceased to
106 pay his debts in the ordinary course of business or cannot

107 pay his debts as they become due or is insolvent within
108 the meaning of the federal bankruptcy law.

109 (24) "Money" means a medium of exchange author-
110 ized or adopted by a domestic or foreign government as
111 a part of its currency.

112 (25) A person has "notice" of a fact when

113 (a) he has actual knowledge of it; or

114 (b) he has received a notice or notification of it; or

115 (c) from all the facts and circumstances known to
116 him at the time in question he has reason to know that
117 it exists.

118 A person "knows" or has "knowledge" of a fact when
119 he has actual knowledge of it. "Discover" or "learn" or a
120 word or phrase of similar import refers to knowledge
121 rather than to reason to know. The time and circum-
122 stances under which a notice or notification may cease to
123 be effective are not determined by this chapter.

124 (26) A person "notifies" or "gives" a notice or notifica-
125 tion to another by taking such steps as may be reasonably
126 required to inform the other in ordinary course whether
127 or not such other actually comes to know of it. A person
128 "receives" a notice or notification when

129 (a) it comes to his attention; or

130 (b) it is duly delivered at the place of business
131 through which the contract was made or at any other
132 place held out by him as the place for receipt of such
133 communications.

134 (27) Notice, knowledge or a notice or notification re-
135 ceived by an organization is effective for a particular
136 transaction from the time when it is brought to the atten-
137 tion of the individual conducting that transaction, and in
138 any event from the time when it would have been
139 brought to his attention if the organization had exercised
140 due diligence. An organization exercises due diligence if
141 it maintains reasonable routines for communicating sig-
142 nificant information to the person conducting the trans-
143 action and there is reasonable compliance with the rou-
144 tines. Due diligence does not require an individual acting
145 for the organization to communicate information unless
146 such communication is part of his regular duties or unless
147 he has reason to know of the transaction and that the

148 transaction would be materially affected by the informa-
149 tion.

150 (28) "Organization" includes a corporation, govern-
151 ment or governmental subdivision or agency, business
152 trust, estate, trust, partnership or association, two or
153 more persons having a joint or common interest, or any
154 other legal or commercial entity.

155 (29) "Party", as distinct from "third party", means a
156 person who has engaged in a transaction or made an
157 agreement within this chapter.

158 (30) "Person" includes an individual or an organiza-
159 tion (See Section 1-102).

160 (31) "Presumption" or "presumed" means that the
161 trier of fact must find the existence of the fact presumed
162 unless and until evidence is introduced which would sup-
163 port a finding of its non-existence.

164 (32) "Purchase" includes taking by sale, discount, ne-
165 gotiation, mortgage, pledge, lien, issue or re-issue, gift or
166 any other voluntary transaction creating an interest in
167 property.

168 (33) "Purchaser" means a person who takes by pur-
169 chase.

170 (34) "Remedy" means any remedial right to which an
171 aggrieved party is entitled with or without resort to a
172 tribunal.

173 (35) "Representative" includes an agent, an officer of
174 a corporation or association, and a trustee, executor or ad-
175 ministrator of an estate, or any other person empowered
176 to act for another.

177 (36) "Rights" includes remedies.

178 (37) "Security interest" means an interest in personal
179 property or fixtures which secures payment or perform-
180 ance of an obligation. The retention or reservation of
181 title by a seller of goods notwithstanding shipment or de-
182 livery to the buyer (Section 2-401) is limited in effect to
183 a reservation of a "security interest". The term also in-
184 cludes any interest of a buyer of accounts, chattel paper,
185 or contract rights which is subject to Article 9. The spe-
186 cial property interest of a buyer of goods on identification
187 of such goods to a contract for sale under Section 2-401 is
188 not a "security interest", but a buyer may also acquire a

189 "security interest" by complying with Article 9. Unless
190 a lease or consignment is intended as security, reservation
191 of title thereunder is not a "security interest" but a con-
192 signment is in any event subject to the provisions on con-
193 signment sales (Section 2-326). Whether a lease is in-
194 tended as security is to be determined by the facts of each
195 case; however, (a) the inclusion of an option to purchase
196 does not of itself make the lease one intended for security,
197 and (b) an agreement that upon compliance with the
198 terms of the lease the lessee shall become or has the op-
199 tion to become the owner of the property for no additional
200 consideration or for a nominal consideration does make
201 the lease one intended for security.

202 (38) "Send" in connection with any writing or notice
203 means to deposit in the mail or deliver for transmission
204 by any other usual means of communication with postage
205 or cost of transmission provided for and properly ad-
206 dressed and in the case of an instrument to an address
207 specified thereon or otherwise agreed, or if there be none
208 to any address reasonable under the circumstances. The
209 receipt of any writing or notice within the time at which
210 it would have arrived if properly sent has the effect of a
211 proper sending.

212 (39) "Signed" includes any symbol executed or
213 adopted by a party with present intention to authenticate
214 a writing.

215 (40) "Surety" includes guarantor.

216 (41) "Telegram" includes a message transmitted by
217 radio, teletype, cable, any mechanical method of transmis-
218 sion, or the like.

219 (42) "Term" means that portion of an agreement
220 which relates to a particular matter.

221 (43) "Unauthorized" signature or indorsement means
222 one made without actual, implied or apparent authority
223 and includes a forgery.

224 (44) "Value". Except as otherwise provided with re-
225 spect to negotiable instruments and bank collections
226 (Sections 3-303, 4-208 and 4-209) a person gives "value"
227 for rights if he acquires them

228 (a) in return for a binding commitment to extend
229 credit or for the extension of immediately available credit

230 whether or not drawn upon and whether or not a charge-
231 back is provided for in the event of difficulties in collec-
232 tion; or

233 (b) as security for or in total or partial satisfaction of
234 a pre-existing claim; or

235 (c) by accepting delivery pursuant to a pre-existing
236 contract for purchase; or

237 (d) generally, in return for any consideration suffici-
238 ent to support a simple contract.

239 (45) "Warehouse receipt" means a receipt issued by a
240 person engaged in the business of storing goods for hire.

241 (46) "Written" or "writing" includes printing, type-
242 writing or any other intentional reduction to tangible
243 form.

**Sec. 1-202. Prima Facie Evidence by Third Party Docu-
2 ments.—**A document in due form purporting to be a bill
3 of lading, policy or certificate of insurance, official
4 weigher's or inspector's certificate, consular invoice, or
5 any other document authorized or required by the con-
6 tract to be issued by a third party shall be prima facie evi-
7 dence of its own authenticity and genuineness and of the
8 facts stated in the document by the third party.

Sec. 1-203. Obligation of Good Faith.—Every contract
2 or duty within this chapter imposes an obligation of good
3 faith in its performance or enforcement.

Sec. 1-204. Time; Reasonable Time; "Seasonably".—(1)
2 Whenever this chapter requires any action to be taken
3 within a reasonable time, any time which is not mani-
4 festly unreasonable may be fixed by agreement.

5 (2) What is a reasonable time for taking any action
6 depends on the nature, purpose and circumstances of such
7 action.

8 (3) An action is taken "seasonably" when it is taken
9 at or within the time agreed or if no time is agreed at or
10 within a reasonable time.

Sec. 1-205. Course of Dealing and Usage of Trade.—(1)
2 A course of dealing is a sequence of previous conduct be-
3 tween the parties to a particular transaction which is
4 fairly to be regarded as establishing a common basis of

5 understanding for interpreting their expressions and
6 other conduct.

7 (2) A usage of trade is any practice or method of deal-
8 ing having such regularity of observance in a place, voca-
9 tion or trade as to justify an expectation that it will be
10 observed with respect to the transaction in question. The
11 existence and scope of such a usage are to be proved as
12 facts. If it is established that such a usage is embodied in
13 a written trade code or similar writing the interpretation
14 of the writing is for the court.

15 (3) A course of dealing between parties and any usage
16 of trade in the vocation or trade in which they are en-
17 gaged or of which they are or should be aware give par-
18 ticular meaning to and supplement or qualify terms of
19 an agreement.

20 (4) The express terms of an agreement and an appli-
21 cable course of dealing or usage of trade shall be con-
22 strued wherever reasonable as consistent with each other;
23 but when such construction is unreasonable express terms
24 control both course of dealing and usage of trade and
25 course of dealing controls usage of trade.

26 (5) An applicable usage of trade in the place where
27 any part of performance is to occur shall be used in inter-
28 preting the agreement as to that part of the performance.

29 (6) Evidence of a relevant usage of trade offered by
30 one party is not admissible unless and until he has given
31 the other party such notice as the court finds sufficient to
32 prevent unfair surprise to the latter.

Sec. 1-206. Statute of Frauds for Kinds of Personal
2 **Property Not Otherwise Covered.**—(1) Except in the cases
3 described in subsection (2) of this section a contract for
4 the sale of personal property is not enforceable by way of
5 action or defense beyond five thousand dollars in amount
6 or value of remedy unless there is some writing which in-
7 dicates that a contract for sale has been made between the
8 parties at a defined or stated price, reasonably identifies
9 the subject matter, and is signed by the party against
10 whom enforcement is sought or by his authorized agent.

11 (2) Subsection (1) of this section does not apply to
12 contracts for the sale of goods (Section 2-201) nor of se-

13 curities (Section 8-319) nor to security agreements (Sec-
14 tion 9-203).

Sec. 1-207. Performance or Acceptance Under Reservation of Rights.—A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

Sec. 1-208. Option to Accelerate at Will.—A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Article 2. Sales

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section 2-101. Short Title.—This article shall be known and may be cited as Uniform Commercial Code—Sales.

Sec. 2-102. Scope; Certain Security and Other Transactions Excluded From This Article.—Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Sec. 2-103. Definitions and Index of Definitions.—(1)
2 In this article unless the context otherwise requires
3 (a) “Buyer” means a person who buys or contracts to
4 buy goods.

5 (b) "Good faith" in the case of a merchant means hon-
6 esty in fact and the observance of reasonable commercial
7 standards of fair dealing in the trade.

8 (c) "Receipt" of goods means taking physical posses-
9 sion of them.

10 (d) "Seller" means a person who sells or contracts to
11 sell goods.

12 (2) Other definitions applying to this article or to
13 specified parts thereof, and the sections in which they ap-
14 pear are:

15 "Acceptance". Section 2-606.

16 "Banker's credit". Section 2-325.

17 "Between merchants". Section 2-104.

18 "Cancellation". Section 2-106 (4).

19 "Commercial unit". Section 2-105.

20 "Confirmed credit". Section 2-325.

21 "Conforming to contract". Section 2-106.

22 "Contract for sale". Section 2-106.

23 "Cover". Section 2-712.

24 "Entrusting". Section 2-403.

25 "Financing agency". Section 2-104.

26 "Future goods". Section 2-105.

27 "Goods". Section 2-105.

28 "Identification". Section 2-501.

29 "Installment contract". Section 2-612.

30 "Letter of Credit". Section 2-325.

31 "Lot". Section 2-105.

32 "Merchant". Section 2-104.

33 "Overseas". Section 2-323.

34 "Person in position of seller". Section 2-707.

35 "Present sale". Section 2-106.

36 "Sale". Section 2-106.

37 "Sale on approval". Section 2-326.

38 "Sale or return". Section 2-326.

39 "Termination". Section 2-106.

40 (3) The following definitions in other articles of this
41 chapter apply to this article:

42 "Check". Section 3-104.

43 "Consignee". Section 7-102.

44 "Consignor". Section 7-102.

45 "Consumer goods". Section 9-109.

46 "Dishonor". Section 3-507.

47 "Draft". Section 3-104.

48 (4) In addition Article 1 of this chapter contains gen-
49 eral definitions and principles of construction and inter-
50 pretation applicable throughout this article.

Sec. 2-104. Definitions: "Merchant"; "Between Mer-
2 **chants"; "Financing Agency".—**(1) "Merchant" means a
3 person who deals in goods of the kind or otherwise by his
4 occupation holds himself out as having knowledge or skill
5 peculiar to the practices or goods involved in the transac-
6 tion or to whom such knowledge or skill may be attrib-
7 uted by his employment of an agent or broker or other
8 intermediary who by his occupation holds himself out as
9 having such knowledge or skill.

10 (2) "Financing agency" means a bank, finance com-
11 pany or other person who in the ordinary course of busi-
12 ness makes advances against goods or documents of title
13 or who by arrangement with either the seller or the buyer
14 intervenes in ordinary course to make or collect payment
15 due or claimed under the contract for sale, as by purchas-
16 ing or paying the seller's draft or making advances against
17 it or by merely taking it for collection whether or not doc-
18 uments of title accompany the draft. "Financing agency"
19 includes also a bank or other person who similarly inter-
20 venes between persons who are in the position of seller
21 and buyer in respect to the goods (Section 2-707).

22 (3) "Between merchants" means in any transaction
23 with respect to which both parties are chargeable with the
24 knowledge or skill of merchants.

Sec. 2-105. Definitions: Transferability; "Goods"; "Fu-
2 **ture" Goods; "Lot"; "Commercial Unit".—**(1) "Goods"
3 mean all things (including specially manufactured goods)
4 which are movable at the time of identification to the con-
5 tract for sale other than the money in which the price is
6 to be paid, investment securities (Article 8) and things in
7 action. "Goods" also includes the unborn young of ani-
8 mals and growing crops and other identified things at-
9 tached to realty as described in the section on goods to be
10 severed from realty (Section 2-107).

11 (2) Goods must be both existing and identified before
12 any interest in them can pass. Goods which are not both
13 existing and identified are "future" goods. A purported
14 present sale of future goods or of any interest therein
15 operates as a contract to sell.

16 (3) There may be a sale of a part interest in existing
17 identified goods.

18 (4) An undivided share in an identified bulk of fungible
19 goods is sufficiently identified to be sold although the
20 quantity of the bulk is not determined. Any agreed pro-
21 portion of such a bulk or any quantity thereof agreed
22 upon by number, weight or other measure may to the
23 extent of the seller's interest in the bulk be sold to the
24 buyer who then becomes an owner in common.

25 (5) "Lot" means a parcel or a single article which is
26 the subject matter of a separate sale or delivery, whether
27 or not it is sufficient to perform the contract.

28 (6) "Commercial unit" means such a unit of goods as
29 by commercial usage is a single whole for purposes of sale
30 and division of which materially impairs its character or
31 value on the market or in use. A commercial unit may be
32 a single article (as a machine) or a set of articles (as a
33 suite of furniture or an assortment of sizes) or a quantity
34 (as a bale, gross, or carload) or any other unit treated in
35 use or in the relevant market as a single whole.

Sec. 2-106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation".—(1) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

12 (2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when
13 they are in accordance with the obligations under the
14 contract.
15

16 (3) "Termination" occurs when either party pursuant
17 to a power created by agreement or law puts an end to
18 the contract otherwise than for its breach. On "termina-
19 tion" all obligations which are still executory on both
20 sides are discharged but any right based on prior breach
21 or performance survives.

22 (4) "Cancellation" occurs when either party puts an
23 end to the contract for breach by the other and its effect
24 is the same as that of "termination" except that the can-
25 celling party also retains any remedy for breach of the
26 whole contract or any unperformed balance.

Sec. 2-107. Goods to Be Severed From Realty: Record-
2 **ing.**—(1) A contract for the sale of timber, minerals or
3 the like or a structure or its materials to be removed from
4 realty is a contract for the sale of goods within this article
5 if they are to be severed by the seller but until severance
6 a purported present sale thereof which is not effective as
7 a transfer of an interest in land is effective only as a con-
8 tract to sell.

9 (2) A contract for the sale apart from the land of
10 growing crops or other things attached to realty and
11 capable of severance without material harm thereto but
12 not described in subsection (1) is a contract for the sale
13 of goods within this article whether the subject matter is
14 to be severed by the buyer or by the seller even though it
15 forms part of the realty at the time of contracting, and
16 the parties can by identification effect a present sale be-
17 fore severance.

18 (3) The provisions of this section are subject to any
19 third party rights provided by the law relating to realty
20 records, and the contract for sale may be executed and
21 recorded as a document transferring an interest in land
22 and shall then constitute notice to third parties of the
23 buyer's rights under the contract for sale.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

Sec. 2-201. Formal Requirements; Statute of Frauds.—

2 (1) Except as otherwise provided in this section a con-
3 tract for the sale of goods for the price of \$500 or more is

4 not enforceable by way of action or defense unless there
5 is some writing sufficient to indicate that a contract for
6 sale has been made between the parties and signed by the
7 party against whom enforcement is sought or by his au-
8 thorized agent or broker. A writing is not insufficient be-
9 cause it omits or incorrectly states a term agreed upon
10 but the contract is not enforceable under this paragraph
11 beyond the quantity of goods shown in such writing.

12 (2) Between merchants if within a reasonable time a
13 writing in confirmation of the contract and sufficient
14 against the sender is received and the party receiving it
15 has reason to know its contents, it satisfies the require-
16 ments of subsection (1) against such party unless written
17 notice of objection to its contents is given within ten days
18 after it is received.

19 (3) A contract which does not satisfy the require-
20 ments of subsection (1) but which is valid in other re-
21 spects is enforceable

22 (a) if the goods are to be specially manufactured for
23 the buyer and are not suitable for sale to others in the
24 ordinary course of the seller's business and the seller, be-
25 fore notice of repudiation is received and under circum-
26 stances which reasonably indicate that the goods are for
27 the buyer, has made either a substantial beginning of
28 their manufacture or commitments for their procure-
29 ment; or

30 (b) if the party against whom enforcement is sought
31 admits in his pleading, testimony or otherwise in court
32 that a contract for sale was made, but the contract is not
33 enforceable under this provision beyond the quantity of
34 goods admitted; or

35 (c) with respect to goods for which payment has been
36 made and accepted or which have been received and ac-
37 cepted (Section 2-606).

Sec. 2-202. Final Written Expression: Parol or Extrinsic
2 **Evidence.**—Terms with respect to which the confirmatory
3 memoranda of the parties agree or which are otherwise
4 set forth in a writing intended by the parties as a final ex-
5 pression of their agreement with respect to such terms as
6 are included therein may not be contradicted by evidence

7 of any prior agreement or of a contemporaneous oral
8 agreement but may be explained or supplemented

9 (a) by course of dealing or usage of trade (Section 1-
10 205) or by course of performance (Section 2-208); and

11 (b) by evidence of consistent additional terms unless
12 the court finds the writing to have been intended also as
13 a complete and exclusive statement of the terms of the
14 agreement.

Sec. 2-203. Seals Inoperative.—The affixing of a seal
2 to a writing evidencing a contract for sale or an offer to
3 buy or sell goods does not constitute the writing a sealed
4 instrument and the law with respect to sealed instruments
5 does not apply to such a contract or offer.

Sec. 2-204. Formation in General.—(1) A contract for
2 sale of goods may be made in any manner sufficient to
3 show agreement, including conduct by both parties which
4 recognizes the existence of such a contract.

5 (2) An agreement sufficient to constitute a contract
6 for sale may be found even though the moment of its mak-
7 ing is undetermined.

8 (3) Even though one or more terms are left open a
9 contract for sale does not fail for indefiniteness if the par-
10 ties have intended to make a contract and there is a rea-
11 sonably certain basis for giving an appropriate remedy.

Sec. 2-205. Firm Offers.—An offer by a merchant to buy
2 or sell goods in a signed writing which by its terms gives
3 assurance that it will be held open is not revocable, for
4 lack of consideration, during the time stated or if no time
5 is stated for a reasonable time, but in no event may such
6 period of irrevocability exceed three months; but any such
7 term of assurance on a form supplied by the offeree must
8 be separately signed by the offeror.

**Sec. 2-206. Offer and Acceptance in Formation of Con-
2 tract.**—(1) Unless otherwise unambiguously indicated by
3 the language or circumstances

4 (a) an offer to make a contract shall be construed as
5 inviting acceptance in any manner and by any medium
6 reasonable in the circumstances;

7 (b) an order or other offer to buy goods for prompt or
8 current shipment shall be construed as inviting accept-

9 ance either by a prompt promise to ship or by the prompt
10 or current shipment of conforming or non-conforming
11 goods, but such a shipment of non-conforming goods does
12 not constitute an acceptance if the seller seasonably noti-
13 fies the buyer that the shipment is offered only as an ac-
14 commodation to the buyer.

15 (2) Where the beginning of a requested performance
16 is a reasonable mode of acceptance an offeror who is not
17 notified of acceptance within a reasonable time may treat
18 the offer as having lapsed before acceptance.

Sec. 2-207. Additional Terms in Acceptance or Con-
2 **firmation.**—(1) A definite and seasonable expression of
3 acceptance or a written confirmation which is sent within
4 a reasonable time operates as an acceptance even though
5 it states terms additional to or different from those of-
6 fered or agreed upon, unless acceptance is expressly made
7 conditional on assent to the additional or different terms.

8 (2) The additional terms are to be construed as pro-
9 posals for addition to the contract. Between merchants
10 such terms become part of the contract unless:

11 (a) the offer expressly limits acceptance to the terms
12 of the offer;

13 (b) they materially alter it; or

14 (c) notification of objection to them has already been
15 given or is given within a reasonable time after notice of
16 them is received.

17 (3) Conduct by both parties which recognizes the
18 existence of a contract is sufficient to establish a contract
19 for sale although the writings of the parties do not other-
20 wise establish a contract. In such case the terms of the
21 particular contract consist of those terms on which the
22 writings of the parties agree, together with any supple-
23 mentary terms incorporated under any other provisions
24 of this chapter.

Sec. 2-208. Course of Performance or Practical Con-
2 **struction.**—(1) Where the contract for sale involves re-
3 peated occasions for performance by either party with
4 knowledge of the nature of the performance and oppor-
5 tunity for objection to it by the other, any course of per-
6 formance accepted or acquiesced in without objection

7 shall be relevant to determine the meaning of the agree-
8 ment.

9 (2) The express terms of the agreement and any such
10 course of performance, as well as any course of dealing
11 and usage of trade, shall be construed whenever reasona-
12 ble as consistent with each other; but when such con-
13 struction is unreasonable, express terms shall control
14 course of performance and course of performance shall
15 control both course of dealing and usage of trade (Sec-
16 tion 1-205).

17 (3) Subject to the provisions of the next section on
18 modification and waiver, such course of performance shall
19 be relevant to show a waiver or modification of any term
20 inconsistent with such course of performance.

Sec. 2-209. Modification, Rescission and Waiver.—(1)

2 An agreement modifying a contract within this article
3 needs no consideration to be binding.

4 (2) A signed agreement which excludes modification
5 or rescission except by a signed writing cannot be other-
6 wise modified or rescinded, but except as between mer-
7 chants such a requirement on a form supplied by the
8 merchant must be separately signed by the other party.

9 (3) The requirements of the statute of frauds section
10 of this article (Section 2-201) must be satisfied if the con-
11 tract as modified is within its provisions.

12 (4) Although an attempt at modification or rescission
13 does not satisfy the requirements of subsection (2) or

14 (3) it can operate as a waiver.

15 (5) A party who has made a waiver affecting an
16 executory portion of the contract may retract the waiver
17 by reasonable notification received by the other party
18 that strict performance will be required of any term
19 waived, unless the retraction would be unjust in view of a
20 material change of position in reliance on the waiver.

Sec. 2-210. Delegation of Performance; Assignment of

2 **Rights.—(1)** A party may perform his duty through a
3 delegate unless otherwise agreed or unless the other party
4 has a substantial interest in having his original promisor
5 perform or control the acts required by the contract. No

6 delegation of performance relieves the party delegating of
7 any duty to perform or any liability for breach.

8 (2) Unless otherwise agreed all rights of either seller or
9 buyer can be assigned except where the assignment would
10 materially change the duty of the other party, or increase
11 materially the burden or risk imposed on him by his con-
12 tract, or impair materially his chance of obtaining return
13 performance. A right to damages for breach of the whole
14 contract or a right arising out of the assignor's due per-
15 formance of his entire obligation can be assigned despite
16 agreement otherwise.

17 (3) Unless the circumstances indicate the contrary a
18 prohibition of assignment of "the contract" is to be con-
19 strued as barring only the delegation to the assignee of the
20 assignor's performance.

21 (4) An assignment of "the contract" or of "all my
22 rights under the contract" or an assignment in similar
23 general terms is an assignment of rights and unless the
24 language or the circumstances (as in an assignment for
25 security) indicate the contrary, it is a delegation of per-
26 formance of the duties of the assignor and its acceptance
27 by the assignee constitutes a promise by him to perform
28 those duties. This promise is enforceable by either the as-
29 signor or the other party to the original contract.

30 (5) The other party may treat any assignment which
31 delegates performance as creating reasonable grounds for
32 insecurity and may without prejudice to his rights against
33 the assignor demand assurances from the assignee (Sec-
34 tion 2-609).

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Sec. 2-301. General Obligations of Parties.—The obliga-
2 tion of the seller is to transfer and deliver and that of the
3 buyer is to accept and pay in accordance with the con-
4 tract.

Sec. 2-302. Unconscionable Contract or Clause.—(1) If
2 the court as a matter of law finds the contract or any
3 clause of the contract to have been unconscionable at the
4 time it was made the court may refuse to enforce the con-

5 tract, or it may enforce the remainder of the contract
6 without the unconscionable clause, or it may so limit the
7 application of any unconscionable clause as to avoid any
8 unconscionable result.

9 (2) When it is claimed or appears to the court that the
10 contract or any clause thereof may be unconscionable the
11 parties shall be afforded a reasonable opportunity to pre-
12 sent evidence as to its commercial setting, purpose and
13 effect to aid the court in making the determination.

Sec. 2-303. Allocation or Division of Risks.—Where this
2 article allocates a risk or a burden as between the parties
3 “unless otherwise agreed”, the agreement may not only
4 shift the allocation but may also divide the risk or burden.

Sec. 2-304. Price Payable in Money, Goods, Realty, or
2 **Otherwise.**—(1) The price can be made payable in money
3 or otherwise. If it is payable in whole or in part in goods
4 each party is a seller of the goods which he is to transfer.

5 (2) Even though all or part of the price is payable in
6 an interest in realty the transfer of the goods and the
7 seller’s obligations with reference to them are subject to
8 this article, but not the transfer of the interest in realty
9 or the transferor’s obligations in connection therewith.

Sec. 2-305. Open Price Term.—(1) The parties if they
2 so intend can conclude a contract for sale even though the
3 price is not settled. In such a case the price is a reason-
4 able price at the time for delivery if

5 (a) nothing is said as to price; or

6 (b) the price is left to be agreed by the parties and
7 they fail to agree; or

8 (c) the price is to be fixed in terms of some agreed
9 market or other standard as set or recorded by a third
10 person or agency and it is not so set or recorded.

11 (2) A price to be fixed by the seller or by the buyer
12 means a price for him to fix in good faith.

13 (3) When a price left to be fixed otherwise than by
14 agreement of the parties fails to be fixed through fault of
15 one party the other may at his option treat the contract
16 as cancelled or himself fix a reasonable price.

17 (4) Where, however, the parties intend not to be
18 bound unless the price be fixed or agreed and it is not

19 fixed or agreed there is no contract. In such a case the
20 buyer must return any goods already received or if un-
21 able so to do must pay their reasonable value at the time
22 of delivery and the seller must return any portion of the
23 price paid on account.

Sec. 2-306. Output, Requirements and Exclusive Deal-
2 **ings.**—(1) A term which measures the quantity by the
3 output of the seller or the requirements of the buyer
4 means such actual output or requirements as may occur
5 in good faith, except that no quantity unreasonably dis-
6 proportionate to any stated estimate or in the absence of a
7 stated estimate to any normal or otherwise comparable
8 prior output or requirements may be tendered or de-
9 manded.

10 (2) A lawful agreement by either the seller or the
11 buyer for exclusive dealing in the kind of goods con-
12 cerned imposes unless otherwise agreed an obligation by
13 the seller to use best efforts to supply the goods and by
14 the buyer to use best efforts to promote their sale.

Sec. 2-307. Delivery in Single Lot or Several Lots.—
2 Unless otherwise agreed all goods called for by a contract
3 for sale must be tendered in a single delivery and pay-
4 ment is due only on such tender but where the circum-
5 stances give either party the right to make or demand
6 delivery in lots the price if it can be apportioned may be
7 demanded for each lot.

Sec. 2-308. Absence of Specified Place for Delivery.—
2 Unless otherwise agreed
3 (a) the place for delivery of goods is the seller's place
4 of business or if he has none his residence; but
5 (b) in a contract for sale of identified goods which to
6 the knowledge of the parties at the time of contracting
7 are in some other place, that place is the place for their
8 delivery; and
9 (c) documents of title may be delivered through cus-
10 tomary banking channels.

Sec. 2-309. Absence of Specific Time Provisions; Notice
2 **of Termination.**—(1) The time for shipment or delivery

3 or any other action under a contract if not provided in this
4 article or agreed upon shall be a reasonable time.

5 (2) Where the contract provides for successive per-
6 formances but is indefinite in duration it is valid for a rea-
7 sonable time but unless otherwise agreed may be termi-
8 nated at any time by either party.

9 (3) Termination of a contract by one party except on
10 the happening of an agreed event requires that reasonable
11 notification be received by the other party and an agree-
12 ment dispensing with notification is invalid if its operation
13 would be unconscionable.

**Sec. 2-310. Open Time for Payment or Running of
2 Credit; Authority to Ship Under Reservation.—Unless
3 otherwise agreed**

4 (a) payment is due at the time and place at which the
5 buyer is to receive the goods even though the place of
6 shipment is the place of delivery; and

7 (b) if the seller is authorized to send the goods he
8 may ship them under reservation, and may tender the doc-
9 uments of title, but the buyer may inspect the goods after
10 their arrival before payment is due unless such inspection
11 is inconsistent with the terms of the contract (Section 2-
12 513); and

13 (c) if delivery is authorized and made by way of docu-
14 ments of title otherwise than by subsection (b) then pay-
15 ment is due at the time and place at which the buyer is to
16 receive the documents regardless of where the goods are
17 to be received; and

18 (d) where the seller is required or authorized to ship
19 the goods on credit the credit period runs from the time
20 of shipment but post-dating the invoice or delaying its dis-
21 patch will correspondingly delay the starting of the credit
22 period.

**Sec. 2-311. Options and Cooperation Respecting Per-
2 formance.—(1) An agreement for sale which is otherwise
3 sufficiently definite (subsection (3) of Section 2-204) to
4 be a contract is not made invalid by the fact that it leaves
5 particulars of performance to be specified by one of the
6 parties. Any such specification must be made in good
7 faith and within limits set by commercial reasonableness.**

8 (2) Unless otherwise agreed specifications relating to
9 assortment of the goods are at the buyer's option and ex-
10 cept as otherwise provided in subsections (1) (c) and (3)
11 of Section 2-319 specifications or arrangements relating to
12 shipment are at the seller's option.

13 (3) Where such specification would materially affect
14 the other party's performance but is not seasonably made
15 or where one party's cooperation is necessary to the
16 agreed performance of the other but is not seasonably
17 forthcoming, the other party in addition to all other rem-
18 edies

19 (a) is excused for any resulting delay in his own per-
20 formance; and

21 (b) may also either proceed to perform in any reason-
22 able manner or after the time for a material part of his
23 own performance treat the failure to specify or to cooper-
24 ate as a breach by failure to deliver or accept the goods.

**Sec. 2-312. Warranty of Title and Against Infringe-
2 ment; Buyer's Obligation Against Infringement.—**(1) Sub-
3 ject to subsection (2) there is in a contract for sale a
4 warranty by the seller that

5 (a) the title conveyed shall be good, and its transfer
6 rightful; and

7 (b) the goods shall be delivered free from any securi-
8 ty interest or other lien or encumbrance of which the
9 buyer at the time of contracting has no knowledge.

10 (2) A warranty under subsection (1) will be excluded
11 or modified only by specific language or by circumstances
12 which give the buyer reason to know that the person sell-
13 ing does not claim title in himself or that he is purporting
14 to sell only such right or title as he or a third person may
15 have.

16 (3) Unless otherwise agreed a seller who is a mer-
17 chant regularly dealing in goods of the kind warrants that
18 the goods shall be delivered free of the rightful claim of
19 any third person by way of infringement or the like but a
20 buyer who furnishes specifications to the seller must hold
21 the seller harmless against any such claim which arises
22 out of compliance with the specifications.

2 **Sec. 2-313. Express Warranties by Affirmation, Prom-**
3 **ise, Description, Sample.—**(1) Express warranties by the
4 seller are created as follows:

5 (a) Any affirmation of fact or promise made by the
6 seller to the buyer which relates to the goods and be-
7 comes part of the basis of the bargain creates an express
8 warranty that the goods shall conform to the affirmation
9 or promise.

10 (b) Any description of the goods which is made part
11 of the basis of the bargain creates an express warranty
12 that the goods shall conform to the description.

13 (c) Any sample or model which is made part of the
14 basis of the bargain creates an express warranty that the
15 whole of the goods shall conform to the sample or model.

16 (2) It is not necessary to the creation of an express
17 warranty that the seller use formal words such as “war-
18 rant” or “guarantee” or that he have a specific intention
19 to make a warranty, but an affirmation merely of the
20 value of the goods or a statement purporting to be merely
21 the seller’s opinion or commendation of the goods does
not create a warranty.

2 **Sec. 2-314. Implied Warranty: Merchantability; Usage**
3 **of Trade.—**(1) Unless excluded or modified (Section 2-316),
4 a warranty that the goods shall be merchantable is im-
5 plied in a contract for their sale if the seller is a merchant
6 with respect to goods of that kind. Under this section the
7 serving for value of food or drink to be consumed either
8 on the premises or elsewhere is a sale.

9 (2) Goods to be merchantable must be at least such as

10 (a) pass without objection in the trade under the con-
11 tract description; and

12 (b) in the case of fungible goods, are of fair average
13 quality within the description; and

14 (c) are fit for the ordinary purposes for which such
15 goods are used; and

16 (d) run, within the variations permitted by the agree-
17 ment, of even kind, quality and quantity within each unit
18 and among all units involved; and

19 (e) are adequately contained, packaged, and labeled
as the agreement may require; and

20 (f) conform to the promises or affirmations of fact
21 made on the container or label if any.

22 (3) Unless excluded or modified (Section 2-316) other
23 implied warranties may arise from course of dealing or
24 usage of trade.

Sec. 2-315. Implied Warranty: Fitness for Particular

2 **Purpose.**—Where the seller at the time of contracting has
3 reason to know any particular purpose for which the
4 goods are required and that the buyer is relying on the
5 seller's skill or judgment to select or furnish suitable
6 goods, there is unless excluded or modified under the next
7 section an implied warranty that the goods shall be fit for
8 such purpose.

Sec. 2-316. Exclusion or Modification of Warranties.—

2 (1) Words or conduct relevant to the creation of an ex-
3 press warranty and words or conduct tending to negate or
4 limit warranty shall be construed wherever reasonable as
5 consistent with each other; but subject to the provisions
6 of this article on parol or extrinsic evidence (Section 2-
7 202) negation or limitation is inoperative to the extent
8 that such construction is unreasonable.

9 (2) Subject to subsection (3), to exclude or modify
10 the implied warranty of merchantability or any part of it
11 the language must mention merchantability and in case of
12 a writing must be conspicuous, and to exclude or modify
13 any implied warranty of fitness the exclusion must be by
14 a writing and conspicuous. Language to exclude all im-
15 plied warranties of fitness is sufficient if it states, for ex-
16 ample, that "There are no warranties which extend be-
17 yond the description on the face hereof".

18 (3) Notwithstanding subsection (2)

19 (a) unless the circumstances indicate otherwise, all
20 implied warranties are excluded by expressions like "as
21 is", "with all faults" or other language which in common
22 understanding calls the buyer's attention to the exclusion
23 of warranties and makes plain that there is no implied
24 warranty; and

25 (b) when the buyer before entering into the contract
26 has examined the goods or the sample or model as fully
27 as he desired or has refused to examine the goods there is

28 no implied warranty with regard to defects which an ex-
29 amination ought in the circumstances to have revealed to
30 him; and

31 (c) an implied warranty can also be excluded or modi-
32 fied by course of dealing or course of performance or
33 usage of trade.

34 (4) Remedies for breach of warranty can be limited in
35 accordance with the provisions of this article on liquida-
36 tion or limitation of damages and on contractual modifi-
37 cation of remedy (Sections 2-718 and 2-719).

**Sec. 2-317. Cumulation and Conflict of Warranties Ex-
2 press or Implied.**—Warranties whether express or implied
3 shall be construed as consistent with each other and as
4 cumulative, but if such construction is unreasonable the
5 intention of the parties shall determine which warranty
6 is dominant. In ascertaining that intention the following
7 rules apply:

8 (a) Exact or technical specifications displace an incon-
9 sistent sample or model or general language of descrip-
10 tion.

11 (b) A sample from an existing bulk displaces incon-
12 sistent general language of description.

13 (c) Express warranties displace inconsistent implied
14 warranties other than an implied warranty of fitness for
15 a particular purpose.

**Sec. 2-318. Third Party Beneficiaries of Warranties Ex-
2 press or Implied.**—A seller's warranty whether express or
3 implied extends to any natural person who is in the fam-
4 ily or household of his buyer or who is a guest in his home
5 if it is reasonable to expect that such person may use, con-
6 sume or be affected by the goods and who is injured in
7 person by breach of the warranty. A seller may not ex-
8 clude or limit the operation of this section.

Sec. 2-319. F.O.B. and F.A.S. Terms.—(1) Unless other-
2 wise agreed the term F.O.B. (which means "free on
3 board") at a named place, even though used only in con-
4 nection with the stated price, is a delivery term under
5 which

6 (a) when the term is F.O.B. the place of shipment, the
7 seller must at that place ship the goods in the manner pro-

8 vided in this article (Section 2-504) and bear the expense
9 and risk of putting them into the possession of the carrier;
10 or

11 (b) when the term is F.O.B. the place of destination,
12 the seller must at his own expense and risk transport the
13 goods to that place and there tender delivery of them in
14 the manner provided in this article (Section 2-503);

15 (c) when under either (a) or (b) the term is also F.O.B.
16 vessel, car or other vehicle, the seller must in addi-
17 tion at his own expense and risk load the goods on board.
18 If the term is F.O.B. vessel the buyer must name the ves-
19 sel and in an appropriate case the seller must comply with
20 the provisions of this article on the form of bill of lading
21 (Section 2-323).

22 (2) Unless otherwise agreed the term F.A.S. vessel
23 (which means "free alongside") at a named port, even
24 though used only in connection with the stated price, is a
25 delivery term under which the seller must

26 (a) at his own expense and risk deliver the goods
27 alongside the vessel in the manner usual in that port or
28 on a dock designated and provided by the buyer; and

29 (b) obtain and tender a receipt for the goods in ex-
30 change for which the carrier is under a duty to issue a bill
31 of lading.

32 (3) Unless otherwise agreed in any case falling within
33 subsection (1) (a) or (c) or subsection (2) the buyer must
34 seasonably give any needed instructions for making deliv-
35 ery, including when the term is F.A.S. or F.O.B. the load-
36 ing berth of the vessel and in an appropriate case its name
37 and sailing date. The seller may treat the failure of
38 needed instructions as a failure of cooperation under this
39 article (Section 2-311). He may also at his option move
40 the goods in any reasonable manner preparatory to deliv-
41 ery or shipment.

42 (4) Under the term F.O.B. vessel or F.A.S. unless oth-
43 wise agreed the buyer must make payment against tender
44 of the required documents and the seller may not tender
45 nor the buyer demand delivery of the goods in substitu-
46 tion for the documents.

Sec. 2-320. C.I.F. and C. & F. Terms.—(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Sec. 2-321. C.I.F. or C. & F.: "Net Landed Weights";

2 **"Payment on Arrival"; Warranty of Condition on Arrival.**

3 —Under a contract containing a term C.I.F. or C. & F.

4 (1) Where the price is based on or is to be adjusted
5 according to "net landed weights", "delivered weights",
6 "out turn" quantity or quality or the like, unless other-
7 wise agreed the seller must reasonably estimate the price.
8 The payment due on tender of the documents called for
9 by the contract is the amount so estimated, but after final
10 adjustment of the price a settlement must be made with
11 commercial promptness.

12 (2) An agreement described in subsection (1) or any
13 warranty of quality or condition of the goods on arrival
14 places upon the seller the risk of ordinary deterioration,
15 shrinkage and the like in transportation but has no effect
16 on the place or time of identification to the contract for
17 sale or delivery or on the passing of the risk of loss.

18 (3) Unless otherwise agreed where the contract pro-
19 vides for payment on or after arrival of the goods the
20 seller must before payment allow such preliminary inspec-
21 tion as is feasible; but if the goods are lost delivery of the
22 documents and payment are due when the goods should
23 have arrived.

Sec. 2-322. Delivery "Ex-Ship".—(1) Unless otherwise

2 agreed a term for delivery of goods "ex-ship" (which
3 means from the carrying vessel) or in equivalent language
4 is not restricted to a particular ship and requires delivery
5 from a ship which has reached a place at the named port
6 of destination where goods of the kind are usually dis-
7 charged.

8 (2) Under such a term unless otherwise agreed

9 (a) the seller must discharge all liens arising out of
10 the carriage and furnish the buyer with a direction which
11 puts the carrier under a duty to deliver the goods; and

12 (b) the risk of loss does not pass to the buyer until the
13 goods leave the ship's tackle or are otherwise properly un-
14 loaded.

Sec. 2-323. Form of Bill of Lading Required in Overseas

2 **Shipment; "Overseas".—(1) Where the contract contem-**
3 **plates overseas shipment and contains a term C.I.F. or**

4 C. & F. or F.O.B. vessel, the seller unless otherwise agreed
5 must obtain a negotiable bill of lading stating that the
6 goods have been loaded on board or, in the case of a term
7 C.I.F. or C. & F., received for shipment.

8 (2) Where in a case within subsection (1) a bill of lad-
9 ing has been issued in a set of parts, unless otherwise
10 agreed if the documents are not to be sent from abroad
11 the buyer may demand tender of the full set; otherwise
12 only one part of the bill of lading need be tendered.
13 Even if the agreement expressly requires a full set

14 (a) due tender of a single part is acceptable within the
15 provisions of this article on cure of improper delivery
16 (subsection (1) of Section 2-508); and

17 (b) even though the full set is demanded, if the docu-
18 ments are sent from abroad the person tendering an in-
19 complete set may nevertheless require payment upon fur-
20 nishing an indemnity which the buyer in good faith deems
21 adequate.

22 (3) A shipment by water or by air or a contract con-
23 templating such shipment is "overseas" insofar as by us-
24 age of trade or agreement it is subject to the commercial,
25 financing or shipping practices characteristic of inter-
26 national deep water commerce.

Sec. 2-324. "No Arrival, No Sale" Term.—Under a term
2 "no arrival, no sale" or terms of like meaning, unless oth-
3 erwise agreed,

4 (a) the seller must properly ship conforming goods
5 and if they arrive by any means he must tender them on
6 arrival but he assumes no obligation that the goods will
7 arrive unless he has caused the non-arrival; and

8 (b) where without fault of the seller the goods are in
9 part lost or have so deteriorated as no longer to conform
10 to the contract or arrive after the contract time, the buyer
11 may proceed as if there had been casualty to identified
12 goods (Section 2-613).

**Sec. 2-325. "Letter of Credit" Term; "Confirmed
2 Credit".**—(1) Failure of the buyer seasonably to furnish an
3 agreed letter of credit is a breach of the contract for sale.

4 (2) The delivery to seller of a proper letter of credit
5 suspends the buyer's obligation to pay. If the letter of

6 credit is dishonored, the seller may on seasonable notifi-
7 cation to the buyer require payment directly from him.

8 (3) Unless otherwise agreed the term "letter of credit"
9 or "banker's credit" in a contract for sale means an irre-
10 vocable credit issued by a financing agency of good repute
11 and, where the shipment is overseas, of good international
12 repute. The term "confirmed credit" means that the credit
13 must also carry the direct obligation of such an agency
14 which does business in the seller's financial market.

Sec. 2-326. Sale on Approval and Sale or Return; Con-
2 **signment Sales and Rights of Creditors.**—(1) Unless other-
3 wise agreed, if delivered goods may be returned by the
4 buyer even though they conform to the contract, the
5 transaction is

6 (a) a "sale on approval" if the goods are delivered pri-
7 marily for use, and

8 (b) a "sale or return" if the goods are delivered pri-
9 marily for resale.

10 (2) Except as provided in subsection (3), goods held
11 on approval are not subject to the claims of the buyer's
12 creditors until acceptance; goods held on sale or return are
13 subject to such claims while in the buyer's possession.

14 (3) Where goods are delivered to a person for sale and
15 such person maintains a place of business at which he
16 deals in goods of the kind involved, under a name other
17 than the name of the person making delivery, then with
18 respect to claims of creditors of the person conducting the
19 business the goods are deemed to be on sale or return.
20 The provisions of this subsection are applicable even
21 though an agreement purports to reserve title to the per-
22 son making delivery until payment or resale or uses such
23 words as "on consignment" or "on memorandum". How-
24 ever, this subsection is not applicable if the person making
25 delivery

26 (a) complies with an applicable law providing for a
27 consignor's interest or the like to be evidenced by a sign,
28 or

29 (b) establishes that the person conducting the busi-
30 ness is generally known by his creditors to be substanti-
31 ally engaged in selling the goods of others, or

32 (c) complies with the filing provisions of the article on
33 Secured Transactions (Article 9).

34 (4) Any "or return" term of a contract for sale is to be
35 treated as a separate contract for sale within the statute
36 of frauds section of this article (Section 2-201) and as con-
37 tradicting the sale aspect of the contract within the pro-
38 visions of this article on parol or extrinsic evidence (Sec-
39 tion 2-202).

Sec. 2-327. Special Incidents of Sale on Approval and

2 **Sale or Return.**—(1) Under a sale on approval unless
3 otherwise agreed

4 (a) although the goods are identified to the contract
5 the risk of loss and the title do not pass to the buyer until
6 acceptance; and

7 (b) use of the goods consistent with the purpose of
8 trial is not acceptance but failure seasonably to notify the
9 seller of election to return the goods is acceptance, and if
10 the goods conform to the contract acceptance of any part
11 is acceptance of the whole; and

12 (c) after due notification of election to return, the re-
13 turn is at the seller's risk and expense but a merchant
14 buyer must follow any reasonable instructions.

15 (2) Under a sale or return unless otherwise agreed

16 (a) the option to return extends to the whole or any
17 commercial unit of the goods while in substantially their
18 original condition, but must be exercised seasonably; and

19 (b) the return is at the buyer's risk and expense.

Sec. 2-328. Sale by Auction.—(1) In a sale by auction

2 if goods are put up in lots each lot is the subject of a
3 separate sale.

4 (2) A sale by auction is complete when the auctioneer
5 so announces by the fall of the hammer or in other cus-
6 tomary manner. Where a bid is made while the hammer
7 is falling in acceptance of a prior bid the auctioneer may
8 in his discretion reopen the bidding or declare the goods
9 sold under the bid on which the hammer was falling.

10 (3) Such a sale is with reserve unless the goods are in
11 explicit terms put up without reserve. In an auction
12 with reserve the auctioneer may withdraw the goods at
13 any time until he announces completion of the sale. In an

14 auction without reserve, after the auctioneer calls for bids
15 on an article or lot, that article or lot cannot be withdrawn
16 unless no bid is made within a reasonable time. In either
17 case a bidder may retract his bid until the auctioneer's
18 announcement of completion of the sale, but a bidder's re-
19 traction does not revive any previous bid.

20 (4) If the auctioneer knowingly receives a bid on the
21 seller's behalf or the seller makes or procures such a bid,
22 and notice has not been given that liberty for such bidding
23 is reserved, the buyer may at his option avoid the sale or
24 take the goods at the price of the last good faith bid prior
25 to the completion of the sale. This subsection shall not
26 apply to any bid at a forced sale.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

**Sec. 2-401. Passing of Title; Reservation for Security;
2 Limited Application of This Section.**—Each provision of
3 this article with regard to the rights, obligations and
4 remedies of the seller, the buyer, purchasers or other
5 third parties applies irrespective of title to the goods ex-
6 cept where the provision refers to such title. Insofar as
7 situations are not covered by the other provisions of this
8 article and matters concerning title become material the
9 following rules apply:

10 (1) Title to goods cannot pass under a contract for
11 sale prior to their identification to the contract (Section
12 2-501), and unless otherwise explicitly agreed the buyer
13 acquires by their identification a special property as lim-
14 ited by this chapter. Any retention or reservation by the
15 seller of the title (property) in goods shipped or de-
16 livered to the buyer is limited in effect to a reservation of
17 a security interest. Subject to these provisions and to the
18 provisions of the article on Secured Transactions (Article
19 9), title to goods passes from the seller to the buyer in
20 any manner and on any conditions explicitly agreed on
21 by the parties.

22 (2) Unless otherwise explicitly agreed title passes to the
23 buyer at the time and place at which the seller completes
24 his performance with reference to the physical delivery of
25 the goods, despite any reservation of a security interest and

26 even though a document of title is to be delivered at a dif-
27 ferent time or place; and in particular and despite any
28 reservation of a security interest by the bill of lading

29 (a) if the contract requires or authorizes the seller to
30 send the goods to the buyer but does not require him to
31 deliver them at destination, title passes to the buyer at
32 the time and place of shipment; but

33 (b) if the contract requires delivery at destination,
34 title passes on tender there.

35 (3) Unless otherwise explicitly agreed where delivery
36 is to be made without moving the goods,

37 (a) if the seller is to deliver a document of title, title
38 passes at the time when and the place where he delivers
39 such documents; or

40 (b) if the goods are at the time of contracting already
41 identified and no documents are to be delivered, title
42 passes at the time and place of contracting.

43 (4) A rejection or other refusal by the buyer to re-
44 ceive or retain the goods, whether or not justified, or a
45 justified revocation of acceptance revests title to the
46 goods in the seller. Such reversioning occurs by operation of
47 law and is not a "sale".

Sec. 2-402. Rights of Seller's Creditors Against Sold

2 **Goods.**—(1) Except as provided in subsections (2) and
3 (3), rights of unsecured creditors of the seller with re-
4 spect to goods which have been identified to a contract for
5 sale are subject to the buyer's rights to recover the goods
6 under this article (Sections 2-502 and 2-716).

7 (2) A creditor of the seller may treat a sale or an
8 identification of goods to a contract for sale as void if as
9 against him a retention of possession by the seller is
10 fraudulent under any rule of law of the state where the
11 goods are situated, except that retention of possession in
12 good faith and current course of trade by a merchant-
13 seller for a commercially reasonable time after a sale or
14 identification is not fraudulent.

15 (3) Nothing in this article shall be deemed to impair
16 the rights of creditors of the seller

17 (a) under the provisions of the article on Secured
18 Transactions (Article 9); or

19 (b) where identification to the contract or delivery is
20 made not in current course of trade but in satisfaction of
21 or as security for a pre-existing claim for money, secur-
22 ity or the like and is made under circumstances which
23 under any rule of law of the state where the goods are
24 situated would apart from this article constitute the
25 transaction a fraudulent transfer or voidable preference.

Sec. 2-403. Power to Transfer; Good Faith Purchase of
2 **Goods; "Entrusting".**—(1) A purchaser of goods acquires
3 all title which his transferor had or had power to transfer
4 except that a purchaser of a limited interest acquires
5 rights only to the extent of the interest purchased. A per-
6 son with voidable title has power to transfer a good title
7 to a good faith purchaser for value. When goods have
8 been delivered under a transaction of purchase the pur-
9 chaser has such power even though

10 (a) the transferor was deceived as to the identity of
11 the purchaser, or

12 (b) the delivery was in exchange for a check which
13 is later dishonored, or

14 (c) it was agreed that the transaction was to be a
15 "cash sale", or

16 (d) the delivery was procured through fraud punisha-
17 ble as larcenous under the criminal law.

18 (2) Any entrusting of possession of goods to a mer-
19 chant who deals in goods of that kind gives him power
20 to transfer all rights of the entruster to a buyer in ordi-
21 nary course of business.

22 (3) "Entrusting" includes any delivery and any acqui-
23 escence in retention of possession regardless of any condi-
24 tion expressed between the parties to the delivery or
25 acquiescence and regardless of whether the procurement
26 of the entrusting or the possessor's disposition of the
27 goods have been such as to be larcenous under the crimi-
28 nal law.

29 (4) The rights of other purchasers of goods and of lien
30 creditors are governed by the articles on Secured Trans-
31 actions (Article 9), Bulk Transfers (Article 6) and Docu-
32 ments of Title (Article 7).

PART 5. PERFORMANCE

Sec. 2-501. Insurable Interest in Goods; Manner of

2 **Identification of Goods.**—(1) The buyer obtains a special
3 property and an insurable interest in goods by identifica-
4 tion of existing goods as goods to which the contract
5 refers even though the goods so identified are non-
6 conforming and he has an option to return or reject them.
7 Such identification can be made at any time and in any
8 manner explicitly agreed to by the parties. In the ab-
9 sence of explicit agreement identification occurs

10 (a) when the contract is made if it is for the sale of
11 goods already existing and identified;

12 (b) if the contract is for the sale of future goods other
13 than those described in paragraph (c), when goods are
14 shipped, marked or otherwise designated by the seller as
15 goods to which the contract refers;

16 (c) when the crops are planted or otherwise become
17 growing crops or the young are conceived if the contract
18 is for the sale of unborn young to be born within twelve
19 months after contracting or for the sale of crops to be
20 harvested within twelve months or the next normal har-
21 vest season after contracting whichever is longer.

22 (2) The seller retains an insurable interest in goods so
23 long as title to or any security interest in the goods re-
24 mains in him and where the identification is by the seller
25 alone he may until default or insolvency or notification to
26 the buyer that the identification is final substitute other
27 goods for those identified.

28 (3) Nothing in this section impairs any insurable in-
29 terest recognized under any other statute or rule of law.

Sec. 2-502. Buyer's Right to Goods on Seller's Insol-

2 **vency.**—(1) Subject to subsection (2) and even though
3 the goods have not been shipped a buyer who has paid a
4 part or all of the price of goods in which he has a special
5 property under the provisions of the immediately preced-
6 ing section may on making and keeping good a tender of
7 any unpaid portion of their price recover them from the
8 seller if the seller becomes insolvent within ten days after
9 receipt of the first installment on their price.

10 (2) If the identification creating his special property
11 has been made by the buyer he acquires the right to re-
12 cover the goods only if they conform to the contract for
13 sale.

Sec. 2-503. Manner of Seller's Tender of Delivery.—

2 (1) Tender of delivery requires that the seller put and
3 hold conforming goods at the buyer's disposition and give
4 the buyer any notification reasonably necessary to enable
5 him to take delivery. The manner, time and place for
6 tender are determined by the agreement and this article,
7 and in particular

8 (a) tender must be at a reasonable hour, and if it is of
9 goods they must be kept available for the period reasona-
10 bly necessary to enable the buyer to take possession; but

11 (b) unless otherwise agreed the buyer must furnish
12 facilities reasonably suited to the receipt of the goods.

13 (2) Where the case is within the next section respect-
14 ing shipment tender requires that the seller comply with
15 its provisions.

16 (3) Where the seller is required to deliver at a partic-
17 ular destination tender requires that he comply with sub-
18 section (1) and also in any appropriate case tender docu-
19 ments as described in subsections (4) and (5) of this sec-
20 tion.

21 (4) Where goods are in the possession of a bailee and
22 are to be delivered without being moved

23 (a) tender requires that the seller either tender a
24 negotiable document of title covering such goods or pro-
25 cure acknowledgment by the bailee of the buyer's right to
26 possession of the goods; but

27 (b) tender to the buyer of a non-negotiable document
28 of title or of a written direction to the bailee to deliver is
29 sufficient tender unless the buyer seasonably objects, and
30 receipt by the bailee of notification of the buyer's rights
31 fixes those rights as against the bailee and all third per-
32 sons; but risk of loss of the goods and of any failure by
33 the bailee to honor the non-negotiable document of title
34 or to obey the direction remains on the seller until the
35 buyer has had a reasonable time to present the document
36 or direction, and a refusal by the bailee to honor the docu-
37 ment or to obey the direction defeats the tender.

38 (5) Where the contract requires the seller to deliver
39 documents

40 (a) he must tender all such documents in correct
41 form, except as provided in this article with respect to
42 bills of lading in a set (subsection (2) of Section 2-323);
43 and

44 (b) tender through customary banking channels is
45 sufficient and dishonor of a draft accompanying the docu-
46 ments constitutes non-acceptance or rejection.

Sec. 2-504. Shipment by Seller.—Where the seller is
2 required or authorized to send the goods to the buyer and
3 the contract does not require him to deliver them at a par-
4 ticular destination, then unless otherwise agreed he must

5 (a) put the goods in the possession of such a carrier
6 and make such a contract for their transportation as may
7 be reasonable having regard to the nature of the goods
8 and other circumstances of the case; and

9 (b) obtain and promptly deliver or tender in due form
10 any document necessary to enable the buyer to obtain
11 possession of the goods or otherwise required by the
12 agreement or by usage of trade; and

13 (c) promptly notify the buyer of the shipment.
14 Failure to notify the buyer under paragraph (c) or to
15 make a proper contract under paragraph (a) is a ground
16 for rejection only if material delay or loss ensues.

Sec. 2-505. Seller's Shipment Under Reservation.—(1)

2 Where the seller has identified goods to the contract by
3 or before shipment:

4 (a) his procurement of a negotiable bill of lading to
5 his own order or otherwise reserves in him a security in-
6 terest in the goods. His procurement of the bill to the
7 order of a financing agency or of the buyer indicates in
8 addition only the seller's expectation of transferring that
9 interest to the person named.

10 (b) a non-negotiable bill of lading to himself or his
11 nominee reserves possession of the goods as security but
12 except in a case of conditional delivery (subsection (2) of
13 Section 2-507) a non-negotiable bill of lading naming the
14 buyer as consignee reserves no security interest even
15 though the seller retains possession of the bill of lading.

16 (2) When shipment by the seller with reservation of a
17 security interest is in violation of the contract for sale it
18 constitutes an improper contract for transportation with-
19 in the preceding section but impairs neither the rights
20 given to the buyer by shipment and identification of the
21 goods to the contract nor the seller's powers as a holder of
22 a negotiable document.

Sec. 2-506. Rights of Financing Agency.—(1) A financ-
2 ing agency by paying or purchasing for value a draft
3 which relates to a shipment of goods acquires to the ex-
4 tent of the payment or purchase and in addition to its
5 own rights under the draft and any document of title se-
6 curing it any rights of the shipper in the goods including
7 the right to stop delivery and the shipper's right to have
8 the draft honored by the buyer.

9 (2) The right to reimbursement of a financing agency
10 which has in good faith honored or purchased the draft
11 under commitment to or authority from the buyer is not
12 impaired by subsequent discovery of defects with refer-
13 ence to any relevant document which was apparently
14 regular on its face.

Sec. 2-507. Effect of Seller's Tender; Delivery on Con-
2 **dition.**—(1) Tender of delivery is a condition to the buy-
3 er's duty to accept the goods and, unless otherwise
4 agreed, to his duty to pay for them. Tender entitles the
5 seller to acceptance of the goods and to payment accord-
6 ing to the contract.

7 (2) Where payment is due and demanded on the de-
8 livery to the buyer of goods or documents of title, his
9 right as against the seller to retain or dispose of them is
10 conditional upon his making the payment due.

Sec. 2-508. Cure by Seller of Improper Tender or De-
2 **livery; Replacement.**—(1) Where any tender or delivery
3 by the seller is rejected because non-conforming and the
4 time for performance has not yet expired, the seller may
5 seasonably notify the buyer of his intention to cure and
6 may then within the contract time make a conforming
7 delivery.

8 (2) Where the buyer rejects a non-conforming tender
9 which the seller had reasonable grounds to believe would

10 be acceptable with or without money allowance the seller
11 may if he seasonably notifies the buyer have a further
12 reasonable time to substitute a conforming tender.

Sec. 2-509. Risk of Loss in the Absence of Breach.—(1)

2 Where the contract requires or authorizes the seller to
3 ship the goods by carrier

4 (a) if it does not require him to deliver them at a par-
5 ticular destination, the risk of loss passes to the buyer
6 when the goods are duly delivered to the carrier even
7 though the shipment is under reservation (Section 2-505);
8 but

9 (b) if it does require him to deliver them at a particu-
10 lar destination and the goods are there duly tendered
11 while in the possession of the carrier, the risk of loss
12 passes to the buyer when the goods are there duly so ten-
13 dered as to enable the buyer to take delivery.

14 (2) Where the goods are held by a bailee to be deliv-
15 ered without being moved, the risk of loss passes to the
16 buyer

17 (a) on his receipt of a negotiable document of title
18 covering the goods; or

19 (b) on acknowledgment by the bailee of the buyer's
20 right to possession of the goods; or

21 (c) after his receipt of a non-negotiable document of
22 title or other written direction to deliver, as provided in
23 subsection (4) (b) of Section 2-503.

24 (3) In any case not within subsection (1) or (2), the
25 risk of loss passes to the buyer on his receipt of the goods
26 if the seller is a merchant; otherwise the risk passes to the
27 buyer on tender of delivery.

28 (4) The provisions of this section are subject to con-
29 trary agreement of the parties and to the provisions of
30 this article on sale on approval (Section 2-327) and on
31 effect of breach on risk of loss (Section 2-510).

Sec. 2-510. Effect of Breach on Risk of Loss.—(1)

2 Where a tender or delivery of goods so fails to conform
3 to the contract as to give a right of rejection the risk
4 of their loss remains on the seller until cure or acceptance.

5 (2) Where the buyer rightfully revokes acceptance he
6 may to the extent of any deficiency in his effective insur-
7 ance coverage treat the risk of loss as having rested on the
8 seller from the beginning.

9 (3) Where the buyer as to conforming goods already
10 identified to the contract for sale repudiates or is other-
11 wise in breach before risk of their loss has passed to him,
12 the seller may to the extent of any deficiency in his effec-
13 tive insurance coverage treat the risk of loss as resting on
14 the buyer for a commercially reasonable time.

Sec. 2-511. Tender of Payment by Buyer; Payment by

2 **Check.**—(1) Unless otherwise agreed tender of payment
3 is a condition to the seller's duty to tender and complete
4 any delivery.

5 (2) Tender of payment is sufficient when made by any
6 means or in any manner current in the ordinary course of
7 business unless seller demands payment in legal tender
8 and gives any extension of time reasonably necessary to
9 procure it.

10 (3) Subject to the provisions of this chapter on the ef-
11 fect of an instrument on an obligation (Section 3-802),
12 payment by check is conditional and is defeated as be-
13 tween the parties by dishonor of the check on due present-
14 ment.

Sec. 2-512. Payment by Buyer Before Inspection.—(1)

2 Where the contract requires payment before inspection
3 non-conformity of the goods does not excuse the buyer
4 from so making payment unless

5 (a) the non-conformity appears without inspection; or
6 (b) despite tender of the required documents the cir-
7 cumstances would justify injunction against honor under
8 the provisions of this chapter (Section 5-114).

9 (2) Payment pursuant to subsection (1) does not con-
10 stitute an acceptance of goods or impair the buyer's right
11 to inspect or any of his remedies.

Sec. 2-513. Buyer's Right to Inspection of Goods.—(1)

2 Unless otherwise agreed and subject to subsection (3),
3 where goods are tendered or delivered or identified to the
4 contract for sale, the buyer has a right before payment or

5 acceptance to inspect them at any reasonable place and
6 time and in any reasonable manner. When the seller is
7 required or authorized to send the goods to the buyer, the
8 inspection may be after their arrival.

9 (2) Expenses of inspection must be borne by the buyer
10 but may be recovered from the seller if the goods do not
11 conform and are rejected.

12 (3) Unless otherwise agreed and subject to the provi-
13 sions of this article on C.I.F. contracts (subsection (3) of
14 Section 2-321), the buyer is not entitled to inspect the
15 goods before payment of the price when the contract pro-
16 vides

17 (a) for delivery "C.O.D." or on other like terms; or

18 (b) for payment against documents of title, except
19 where such payment is due only after the goods are to be-
20 come available for inspection.

21 (4) A place or method of inspection fixed by the par-
22 ties is presumed to be exclusive but unless otherwise ex-
23 pressly agreed it does not postpone identification or shift
24 the place for delivery or for passing the risk of loss. If
25 compliance becomes impossible, inspection shall be as pro-
26 vided in this section unless the place or method fixed was
27 clearly intended as an indispensable condition failure of
28 which avoids the contract.

Sec. 2-514. When Documents Deliverable on Accept-
2 **ance; When on Payment.**—Unless otherwise agreed docu-
3 ments against which a draft is drawn are to be delivered
4 to the drawee on acceptance of the draft if it is payable
5 more than three days after presentment; otherwise, only
6 on payment.

Sec. 2-515. Preserving Evidence of Goods in Dispute.—
2 In furtherance of the adjustment of any claim or dispute
3 (a) either party on reasonable notification to the other
4 and for the purpose of ascertaining the facts and preserv-
5 ing evidence has the right to inspect, test and sample the
6 goods including such of them as may be in the possession
7 or control of the other; and
8 (b) the parties may agree to a third party inspection
9 or survey to determine the conformity or condition of the

10 goods and may agree that the findings shall be binding
11 upon them in any subsequent litigation or adjustment.

PART 6. BREACH, REPUDIATION AND EXCUSE

Sec. 2-601. Buyer's Rights on Improper Delivery.—

2 Subject to the provisions of this article on breach in in-
3 stallment contracts (Section 2-612) and unless otherwise
4 agreed under the sections on contractual limitations of
5 remedy (Sections 2-718 and 2-719), if the goods or the ten-
6 der of delivery fail in any respect to conform to the con-
7 tract, the buyer may

- 8 (a) reject the whole; or
- 9 (b) accept the whole; or
- 10 (c) accept any commercial unit or units and reject the
11 rest.

Sec. 2-602. Manner and Effect of Rightful Rejection.

2 —(1) Rejection of goods must be within a reasonable
3 time after their delivery or tender. It is ineffective un-
4 less the buyer seasonably notifies the seller.

5 (2) Subject to the provisions of the two following sec-
6 tions on rejected goods (Sections 2-603 and 2-604),

7 (a) after rejection any exercise of ownership by the
8 buyer with respect to any commercial unit is wrongful as
9 against the seller; and

10 (b) if the buyer has before rejection taken physical
11 possession of goods in which he does not have a security
12 interest under the provisions of this article (subsection
13 (3) of Section 2-711), he is under a duty after rejection to
14 hold them with reasonable care at the seller's disposition
15 for a time sufficient to permit the seller to remove them;
16 but

17 (c) the buyer has no further obligations with regard
18 to goods rightfully rejected.

19 (3) The seller's rights with respect to goods wrong-
20 fully rejected are governed by the provisions of this ar-
21 ticle on seller's remedies in general (Section 2-703).

Sec. 2-603. Merchant Buyer's Duties as to Rightfully

2 **Rejected Goods.—**(1) Subject to any security interest in
3 the buyer (subsection (3) of Section 2-711), when the
4 seller has no agent or place of business at the market of

5 rejection a merchant buyer is under a duty after rejection
6 of goods in his possession or control to follow any reason-
7 able instructions received from the seller with respect to
8 the goods and in the absence of such instructions to make
9 reasonable efforts to sell them for the seller's account if
10 they are perishable or threaten to decline in value speed-
11 ily. Instructions are not reasonable if on demand indem-
12 nity for expenses is not forthcoming.

13 (2) When the buyer sells goods under subsection (1), he
14 is entitled to reimbursement from the seller or out of the
15 proceeds for reasonable expenses of caring for and selling
16 them, and if the expenses include no selling commission
17 then to such commission as is usual in the trade or if there
18 is none to a reasonable sum not exceeding ten per cent on
19 the gross proceeds.

20 (3) In complying with this section the buyer is held
21 only to good faith and good faith conduct hereunder is
22 neither acceptance nor conversion nor the basis of an ac-
23 tion for damages.

Sec. 2-604. Buyer's Options as to Salvage of Rightfully
2 **Rejected Goods.**—Subject to the provisions of the immedi-
3 ately preceding section on perishables if the seller gives
4 no instructions within a reasonable time after notification
5 of rejection the buyer may store the rejected goods for the
6 seller's account or reship them to him or resell them for
7 the seller's account with reimbursement as provided in
8 the preceding section. Such action is not acceptance or
9 conversion.

Sec. 2-605. Waiver of Buyer's Objections by Failure to
2 **Particularize.**—(1) The buyer's failure to state in connec-
3 tion with rejection a particular defect which is ascertain-
4 able by reasonable inspection precludes him from relying
5 on the unstated defect to justify rejection or to establish
6 breach
7 (a) where the seller could have cured it if stated sea-
8 sonably; or
9 (b) between merchants when the seller has after re-
10 jection made a request in writing for a full and final writ-
11 ten statement of all defects on which the buyer proposes
12 to rely.

13 (2) Payment against documents made without reser-
14 vation of rights precludes recovery of the payment for de-
15 fects apparent on the face of the documents.

Sec. 2-606. What Constitutes Acceptance of Goods.—

2 (1) Acceptance of goods occurs when the buyer

3 (a) after a reasonable opportunity to inspect the
4 goods signifies to the seller that the goods are conforming
5 or that he will take or retain them in spite of their non-
6 conformity; or

7 (b) fails to make an effective rejection (subsection
8 (1) of Section 2-602), but such acceptance does not occur
9 until the buyer has had a reasonable opportunity to in-
10 spect them; or

11 (c) does any act inconsistent with the seller's owner-
12 ship; but if such act is wrongful as against the seller it is
13 an acceptance only if ratified by him.

14 (2) Acceptance of a part of any commercial unit is
15 acceptance of that entire unit.

**Sec. 2-607. Effect of Acceptance; Notice of Breach;
2 Burden of Establishing Breach After Acceptance; Notice
3 of Claim or Litigation to Person Answerable Over.—(1)**

4 The buyer must pay at the contract rate for any goods
5 accepted.

6 (2) Acceptance of goods by the buyer precludes rejec-
7 tion of the goods accepted and if made with knowledge of
8 a non-conformity cannot be revoked because of it unless
9 the acceptance was on the reasonable assumption that the
10 non-conformity would be seasonably cured but accept-
11 ance does not of itself impair any other remedy provided
12 by this article for non-conformity.

13 (3) Where a tender has been accepted

14 (a) the buyer must within a reasonable time after he
15 discovers or should have discovered any breach notify the
16 seller of breach or be barred from any remedy; and

17 (b) if the claim is one for infringement or the like
18 (subsection (3) of this Section 2-312) and the buyer is
19 sued as a result of such a breach he must so notify the
20 seller within a reasonable time after he receives notice of
21 the litigation or be barred from any remedy over for
22 liability established by the litigation.

23 (4) The burden is on the buyer to establish any
24 breach with respect to the goods accepted.

25 (5) Where the buyer is sued for breach of a warranty
26 or other obligation for which his seller is answerable over

27 (a) he may give his seller written notice of the litiga-
28 tion. If the notice states that the seller may come in and
29 defend and that if the seller does not do so he will be
30 bound in any action against him by his buyer by any de-
31 termination of fact common to the two litigations, then
32 unless the seller after reasonable receipt of the notice
33 does come in and defend he is so bound.

34 (b) if the claim is one for infringement or the like
35 (subsection (3) of Section 2-312) the original seller may
36 demand in writing that his buyer turn over to him control
37 of the litigation including settlement or else be barred
38 from any remedy over and if he also agrees to bear all ex-
39 pense and to satisfy any adverse judgment, then unless
40 the buyer after reasonable receipt of the demand does
41 turn over control the buyer is so barred.

42 (6) The provisions of subsections (3), (4) and (5)
43 apply to any obligation of a buyer to hold the seller harm-
44 less against infringement or the like (subsection (3) of
45 Section 2-312).

Sec. 2-608. Revocation of Acceptance in Whole or in

2 **Part.**—(1) The buyer may revoke his acceptance of a lot
3 or commercial unit whose non-conformity substantially
4 impairs its value to him if he has accepted it

5 (a) on the reasonable assumption that its non-
6 conformity would be cured and it has not been seasonably
7 cured; or

8 (b) without discovery of such non-conformity if his
9 acceptance was reasonably induced either by the difficulty
10 of discovery before acceptance or by the seller's assur-
11 ances.

12 (2) Revocation of acceptance must occur within a
13 reasonable time after the buyer discovers or should have
14 discovered the ground for it and before any substantial
15 change in condition of the goods which is not caused by
16 their own defects. It is not effective until the buyer
17 notifies the seller of it.

18 (3) A buyer who so revokes has the same rights and
19 duties with regard to the goods involved as if he had re-
20 jected them.

Sec. 2-609. Right to Adequate Assurance of Perform-
2 **ance.**—(1) A contract for sale imposes an obligation on
3 each party that the other's expectation of receiving due
4 performance will not be impaired. When reasonable
5 grounds for insecurity arise with respect to the perform-
6 ance of either party the other may in writing demand
7 adequate assurance of due performance and until he re-
8 ceives such assurance may if commercially reasonable
9 suspend any performance for which he has not already
10 received the agreed return.

11 (2) Between merchants the reasonableness of grounds
12 for insecurity and the adequacy of any assurance offered
13 shall be determined according to commercial standards.

14 (3) Acceptance of any improper delivery or payment
15 does not prejudice the aggrieved party's right to demand
16 adequate assurance of future performance.

17 (4) After receipt of a justified demand failure to pro-
18 vide within a reasonable time not exceeding thirty days
19 such assurance of due performance as is adequate under
20 the circumstances of the particular case is a repudiation
21 of the contract.

Sec. 2-610. Anticipatory Repudiation.—When either
2 party repudiates the contract with respect to a perform-
3 ance not yet due the loss of which will substantially im-
4 pair the value of the contract to the other, the aggrieved
5 party may

6 (a) for a commercially reasonable time await per-
7 formance by the repudiating party; or

8 (b) resort to any remedy for breach (Section 2-703 or
9 Section 2-711), even though he has notified the repudiat-
10 ing party that he would await the latter's performance
11 and has urged retraction; and

12 (c) in either case suspend his own performance or
13 proceed in accordance with the provisions of this article
14 on the seller's right to identify goods to the contract not-
15 withstanding breach or to salvage unfinished goods (Sec-
16 tion 2-704).

Sec. 2-611. Retraction of Anticipatory Repudiation.—

2 (1) Until the repudiating party's next performance is
3 due he can retract his repudiation unless the aggrieved
4 party has since the repudiation cancelled or materially
5 changed his position or otherwise indicated that he con-
6 sideres the repudiation final.

7 (2) Retraction may be by any method which clearly
8 indicates to the aggrieved party that the repudiating
9 party intends to perform, but must include any assurance
10 justifiably demanded under the provisions of this article
11 (Section 2-609).

12 (3) Retraction reinstates the repudiating party's
13 rights under the contract with due excuse and allowance
14 to the aggrieved party for any delay occasioned by the
15 repudiation.

Sec. 2-612. "Installment Contract"; Breach.—(1) An

2 "installment contract" is one which requires or authorizes
3 the delivery of goods in separate lots to be separately ac-
4 cepted, even though the contract contains a clause "each
5 delivery is a separate contract" or its equivalent.

6 (2) The buyer may reject any installment which is
7 non-conforming if the non-conformity substantially im-
8 pairs the value of that installment and cannot be cured or
9 if the non-conformity is a defect in the required docu-
10 ments; but if the non-conformity does not fall within sub-
11 section (3) and the seller gives adequate assurance of its
12 cure the buyer must accept that installment.

13 (3) Whenever non-conformity or default with respect
14 to one or more installments substantially impairs the
15 value of the whole contract there is a breach of the whole.
16 But the aggrieved party reinstates the contract if he ac-
17 cepts a non-conforming installment without seasonably
18 notifying of cancellation or if he brings an action with re-
19 spect only to past installments or demands performance
20 as to future installments.

Sec. 2-613. Casualty to Identified Goods.—Where the

2 contract requires for its performance goods identified
3 when the contract is made, and the goods suffer casualty
4 without fault of either party before the risk of loss passes

5 to the buyer, or in a proper case under a "no arrival, no
6 sale" term (Section 2-324) then

- 7 (a) if the loss is total the contract is avoided; and
8 (b) if the loss is partial or the goods have so deterior-
9 ated as no longer to conform to the contract the buyer
10 may nevertheless demand inspection and at his option
11 either treat the contract as avoided or accept the goods
12 with due allowance from the contract price for the deteri-
13 oration or the deficiency in quantity but without further
14 right against the seller.

Sec. 2-614. Substituted Performance.—(1) Where with-
2 out fault of either party the agreed berthing, loading, or
3 unloading facilities fail or an agreed type of carrier be-
4 comes unavailable or the agreed manner of delivery oth-
5 erwise becomes commercially impracticable but a com-
6 mercially reasonable substitute is available, such substi-
7 tute performance must be tendered and accepted.

8 (2) If the agreed means or manner of payment fails
9 because of domestic or foreign governmental regulation,
10 the seller may withhold or stop delivery unless the buyer
11 provides a means or manner of payment which is com-
12 mercially a substantial equivalent. If delivery has al-
13 ready been taken, payment by the means or in the manner
14 provided by the regulation discharges the buyer's obliga-
15 tion unless the regulation is discriminatory, oppressive or
16 predatory.

Sec. 2-615. Excuse by Failure of Presupposed Condi-
2 **tions.**—Except so far as a seller may have assumed a
3 greater obligation and subject to the preceding section on
4 substituted performance:

- 5 (a) Delay in delivery or non-delivery in whole or in
6 part by a seller who complies with paragraphs (b) and
7 (c) is not a breach of his duty under a contract for sale if
8 performance as agreed has been made impracticable by the
9 occurrence of a contingency the non-occurrence of which
10 was a basic assumption on which the contract was made or
11 by compliance in good faith with any applicable foreign
12 or domestic governmental regulation or order whether or
13 not it later proves to be invalid.
14 (b) Where the causes mentioned in paragraph (a) af-

15 fect only a part of the seller's capacity to perform, he must
16 allocate production and deliveries among his customers
17 but may at his option include regular customers not then
18 under contract as well as his own requirements for further
19 manufacture. He may so allocate in any manner which
20 is fair and reasonable.

21 (c) The seller must notify the buyer seasonably that
22 there will be delay or non-delivery and, when allocation
23 is required under paragraph (b), of the estimated quota
24 thus made available for the buyer.

Sec. 2-616. Procedure on Notice Claiming Excuse.—(1)

2 Where the buyer receives notification of a material or in-
3 definite delay or an allocation justified under the preced-
4 ing section he may by written notification to the seller as
5 to any delivery concerned, and where the prospective de-
6 ficiency substantially impairs the value of the whole con-
7 tract under the provisions of this article relating to breach
8 of installment contracts (Section 2-612), then also as to
9 the whole,

10 (a) terminate and thereby discharge any unexecuted
11 portion of the contract; or

12 (b) modify the contract by agreeing to take his avail-
13 able quota in substitution.

14 (2) If after receipt of such notification from the seller
15 the buyer fails so to modify the contract within a reason-
16 able time not exceeding thirty days the contract lapses
17 with respect to any deliveries affected.

18 (3) The provisions of this section may not be negated
19 by agreement except in so far as the seller has assumed
20 a greater obligation under the preceding section.

PART 7. REMEDIES

**Sec. 2-701. Remedies for Breach of Collateral Con-
2 tracts Not Impaired.—**Remedies for breach of any obliga-
3 tion or promise collateral or ancillary to a contract for
4 sale are not impaired by the provisions of this article.

**Sec. 2-702. Seller's Remedies on Discovery of Buyer's
2 Insolvency.—(1)** Where the seller discovers the buyer to
3 be insolvent he may refuse delivery except for cash in-
4 cluding payment for all goods theretofore delivered under

5 the contract, and stop delivery under this article (Section
6 2-705).

7 (2) Where the seller discovers that the buyer has re-
8 ceived goods on credit while insolvent he may reclaim the
9 goods upon demand made within ten days after the re-
10 ceipt, but if misrepresentation of solvency has been made
11 to the particular seller in writing within three months be-
12 fore delivery the ten day limitation does not apply. Ex-
13 cept as provided in this subsection the seller may not base
14 a right to reclaim goods on the buyer's fraudulent or inno-
15 cent misrepresentation of solvency or of intent to pay.

16 (3) The seller's right to reclaim under subsection (2)
17 is subject to the rights of a buyer in ordinary course or
18 other good faith purchaser or lien creditor under this ar-
19 ticle (Section 2-403). Successful reclamation of goods ex-
20 cludes all other remedies with respect to them.

Sec. 2-703. Seller's Remedies in General.—Where the
2 buyer wrongfully rejects or revokes acceptance of goods
3 or fails to make a payment due on or before delivery or
4 repudiates with respect to a part or the whole, then with
5 respect to any goods directly affected and, if the breach is
6 of the whole contract (Section 2-612), then also with re-
7 spect to the whole undelivered balance, the aggrieved
8 seller may

- 9 (a) withhold delivery of such goods;
- 10 (b) stop delivery by any bailee as hereafter provided
11 (Section 2-705);
- 12 (c) proceed under the next section respecting goods
13 still unidentified to the contract;
- 14 (d) resell and recover damages as hereafter provided
15 (Section 2-706);
- 16 (e) recover damages for non-acceptance (Section 2-
17 708) or in a proper case the price (Section 2-709);
- 18 (f) cancel.

**Sec. 2-704. Seller's Right to Identify Goods to the Con-
2 tract Notwithstanding Breach or to Salvage Unfinished
3 Goods.**—(1) An aggrieved seller under the preceding sec-
4 tion may

- 5 (a) identify to the contract conforming goods not al-

6 ready identified if at the time he learned of the breach
7 they are in his possession or control;

8 (b) treat as the subject of resale goods which have
9 demonstrably been intended for the particular contract
10 even though those goods are unfinished.

11 (2) Where the goods are unfinished an aggrieved seller
12 may in the exercise of reasonable commercial judgment
13 for the purposes of avoiding loss and of effective realiza-
14 tion either complete the manufacture and wholly identify
15 the goods to the contract or cease manufacture and resell
16 for scrap or salvage value or proceed in any other reason-
17 able manner.

Sec. 2-705. Seller's Stoppage of Delivery in Transit or
2 **Otherwise.**—(1) The seller may stop delivery of goods in
3 the possession of a carrier or other bailee when he discov-
4 ers the buyer to be insolvent (Section 2-702) and may stop
5 delivery of carload, truckload, planeload or larger ship-
6 ments of express or freight when the buyer repudiates or
7 fails to make a payment due before delivery or if for any
8 other reason the seller has a right to withhold or reclaim
9 the goods.

10 (2) As against such buyer the seller may stop delivery
11 until

12 (a) receipt of the goods by the buyer; or

13 (b) acknowledgment to the buyer by any bailee of the
14 goods except a carrier that the bailee holds the goods for
15 the buyer; or

16 (c) such acknowledgment to the buyer by a carrier by
17 re-shipment or as warehouseman; or

18 (d) negotiation to the buyer of any negotiable docu-
19 ment of title covering the goods.

20 (3) (a) To stop delivery the seller must so notify as
21 to enable the bailee by reasonable diligence to prevent de-
22 livery of the goods.

23 (b) After such notification the bailee must hold and
24 deliver the goods according to the directions of the seller
25 but the seller is liable to the bailee for any ensuing
26 charges or damages.

27 (c) If a negotiable document of title has been issued
28 for goods the bailee is not obliged to obey a notification to
29 stop until surrender of the document.

30 (d) A carrier who has issued a non-negotiable bill of
31 lading is not obliged to obey a notification to stop received
32 from a person other than the consignor.

Sec. 2-706. Seller's Resale Including Contract for Re-
2 **sale.**—(1) Under the conditions stated in Section 2-703
3 on seller's remedies, the seller may resell the goods con-
4 cerned or the undelivered balance thereof. Where the re-
5 sale is made in good faith and in a commercially reasona-
6 ble manner the seller may recover the difference between
7 the resale price and the contract price together with any
8 incidental damages allowed under the provisions of this
9 article (Section 2-710), but less expenses saved in conse-
10 quence of the buyer's breach.

11 (2) Except as otherwise provided in subsection (3) or
12 unless otherwise agreed resale may be at public or private
13 sale including sale by way of one or more contracts to sell
14 or of identification to an existing contract of the seller.
15 Sale may be as a unit or in parcels and at any time and
16 place and on any terms but every aspect of the sale in-
17 cluding the method, manner, time, place and terms must
18 be commercially reasonable. The resale must be reasona-
19 bly identified as referring to the broken contract, but it is
20 not necessary that the goods be in existence or that any
21 or all of them have been identified to the contract before
22 the breach.

23 (3) Where the resale is at private sale the seller must
24 give the buyer reasonable notification of his intention to
25 resell.

26 (4) Where the resale is at public sale

27 (a) only identified goods can be sold except where
28 there is a recognized market for a public sale of futures
29 in goods of the kind; and

30 (b) it must be made at a usual place or market for
31 public sale if one is reasonably available and except in
32 the case of goods which are perishable or threaten to de-
33 cline in value speedily the seller must give the buyer rea-
34 sonable notice of the time and place of the resale; and

35 (c) if the goods are not to be within the view of those
36 attending the sale the notification of sale must state the
37 place where the goods are located and provide for their
38 reasonable inspection by prospective bidders; and

39 (d) the seller may buy.

40 (5) A purchaser who buys in good faith at a resale
41 takes the goods free of any rights of the original buyer
42 even though the seller fails to comply with one or more
43 of the requirements of this section.

44 (6) The seller is not accountable to the buyer for any
45 profit made on any resale. A person in the position of a
46 seller (Section 2-707) or a buyer who has rightfully re-
47 jected or justifiably revoked acceptance must account for
48 for any excess over the amount of his security interest, as
49 hereinafter defined (subsection (3) of Section 2-711).

Sec. 2-707. "Person in the Position of a Seller".—(1) A
2 "person in the position of a seller" includes as against a
3 principal an agent who has paid or become responsible for
4 the price of goods on behalf of his principal or anyone who
5 otherwise holds a security interest or other right in goods
6 similar to that of a seller.

7 (2) A person in the position of a seller may as pro-
8 vided in this article withhold or stop delivery (Section 2-
9 705 and resell (Section 2-706) and recover incidental
10 damages (Section 2-710).

Sec. 2-708. Seller's Damages for Non-acceptance or Re-
2 **repudiation.—**(1) Subject to subsection (2) and to the pro-
3 visions of this article with respect to proof of market
4 price (Section 2-723), the measure of damages for non-
5 acceptance or repudiation by the buyer is the difference
6 between the market price at the time and place for tender
7 and the unpaid contract price together with any inciden-
8 tal damages provided in this article (Section 2-710), but
9 less expenses saved in consequence of the buyer's breach.

10 (2) If the measure of damages provided in subsection
11 (1) is inadequate to put the seller in as good a position as
12 performance would have done then the measure of dam-
13 ages is the profit (including reasonable overhead) which
14 the seller would have made from full performance by the
15 buyer, together with any incidental damages provided in
16 this article (Section 2-710), due allowance for costs rea-
17 sonably incurred and due credit for payments or proceeds
18 of resale.

Sec. 2-709. Action for the Price.—(1) When the buyer
2 fails to pay the price as it becomes due the seller may re-
3 cover, together with any incidental damages under the
4 next section, the price

5 (a) of goods accepted or of conforming goods lost or
6 damaged within a commercially reasonable time after
7 risk of their loss has passed to the buyer; and

8 (b) of goods identified to the contract if the seller is
9 unable after reasonable effort to resell them at a reason-
10 able price or the circumstances reasonably indicate that
11 such effort will be unavailing.

12 (2) Where the seller sues for the price he must hold
13 for the buyer any goods which have been identified to the
14 contract and are still in his control except that if resale
15 becomes possible he may resell them at any time prior to
16 the collection of the judgment. The net proceeds of any
17 such resale must be credited to the buyer and payment of
18 the judgment entitles him to any goods not resold.

19 (3) After the buyer has wrongfully rejected or re-
20 voked acceptance of the goods or has failed to make a
21 payment due or has repudiated (Section 2-610), a seller
22 who is held not entitled to the price under this section
23 shall nevertheless be awarded damages for non-accept-
24 ance under the preceding section.

Sec. 2-710. Seller's Incidental Damages.—Incidental
2 damages to an aggrieved seller include any commercially
3 reasonable charges, expenses or commissions incurred in
4 stopping delivery, in the transportation, care and custody
5 of goods after the buyer's breach, in connection with re-
6 turn or resale of the goods or otherwise resulting from
7 the breach.

**Sec. 2-711. Buyer's Remedies in General; Buyer's Secu-
2 rity Interest in Rejected Goods.**—(1) Where the seller
3 fails to make delivery or repudiates or the buyer right-
4 fully rejects or justifiably revokes acceptance then with
5 respect to any goods involved, and with respect to the
6 whole if the breach goes to the whole contract (Section 2-
7 612), the buyer may cancel and whether or not he has
8 done so may in addition to recovering so much of the
9 price as has been paid

10 (a) "cover" and have damages under the next section
11 as to all the goods affected whether or not they have been
12 identified to the contract; or

13 (b) recover damages for non-delivery as provided in
14 this article (Section 2-713).

15 (2) Where the seller fails to deliver or repudiates the
16 buyer may also

17 (a) if the goods have been identified recover them as
18 provided in this article (Section 2-502); or

19 (b) in a proper case obtain specific performance or
20 replevy the goods as provided in this article (Section 2-
21 716).

22 (3) On rightful rejection or justifiable revocation of
23 acceptance a buyer has a security interest in goods in his
24 possession or control for any payments made on their
25 price and any expenses reasonably incurred in their in-
26 spection, receipt, transportation, care and custody and
27 may hold such goods and resell them in like manner as
28 an aggrieved seller (Section 2-703).

Sec. 2-712. "Cover"; Buyer's Procurement of Substitute

2 **Goods.**—(1) After a breach within the preceding section
3 the buyer may "cover" by making in good faith and with-
4 out unreasonable delay any reasonable purchase of or
5 contract to purchase goods in substitution for those due
6 from the seller.

7 (2) The buyer may recover from the seller as damages
8 the difference between the cost of cover and the contract
9 price together with any incidental or consequential dam-
10 ages as hereinafter defined (Section 2-715), but less ex-
11 penses saved in consequence of the seller's breach.

12 (3) Failure of the buyer to effect cover within this
13 section does not bar him from any other remedy.

Sec. 2-713. Buyer's Damages for Non-Delivery or Re-

2 **pu diation.**—(1) Subject to the provisions of this article
3 with respect to proof of market price (Section 2-723), the
4 measure of damages for non-delivery or repudiation by
5 the seller is the difference between the market price at the
6 time when the buyer learned of the breach and the con-
7 tract price together with any incidental and consequential

8 damages provided in this article (Section 2-715), but less
9 expenses saved in consequence of the seller's breach.

10 (2) Market price is to be determined as of the place for
11 tender or, in cases of rejection after arrival or revocation
12 of acceptance, as of the place of arrival.

Sec. 2-714. Buyer's Damages for Breach in Regard to

2 **Accepted Goods.**—(1) Where the buyer has accepted
3 goods and given notification (subsection (3) of Section
4 2-607) he may recover as damages for any non-conformity
5 of tender the loss resulting in the ordinary course of events
6 from the seller's breach as determined in any manner
7 which is reasonable.

8 (2) The measure of damages for breach of warranty is
9 the difference at the time and place of acceptance between
10 the value of the goods accepted and the value they would
11 have had if they had been as warranted, unless special
12 circumstances show proximate damages of a different
13 amount.

14 (3) In a proper case any incidental and consequential
15 damages under the next section may also be recovered.

Sec. 2-715. Buyer's Incidental and Consequential Dam-

2 **ages.**—(1) Incidental damages resulting from the seller's
3 breach include expenses reasonably incurred in inspec-
4 tion, receipt, transportation and care and custody of goods
5 rightfully rejected, any commercially reasonable charges,
6 expenses or commissions in connection with effecting
7 cover and any other reasonable expense incident to the
8 delay or other breach.

9 (2) Consequential damages resulting from the seller's
10 breach include

11 (a) any loss resulting from general or particular re-
12 quirements and needs of which the seller at the time of
13 contracting had reason to know and which could not rea-
14 sonably be prevented by cover or otherwise; and

15 (b) injury to person or property proximately resulting
16 from any breach of warranty.

Sec. 2-716. Buyer's Right to Specific Performance or

2 **Replevin.**—(1) Specific performance may be decreed
3 where the goods are unique or in other proper circum-
4 stances.

5 (2) The decree for specific performance may include
6 such terms and conditions as to payment of the price, dam-
7 ages, or other relief as the court may deem just.

8 (3) The buyer has a right of replevin for goods iden-
9 tified to the contract if after reasonable effort he is unable
10 to effect cover for such goods or the circumstances reason-
11 ably indicate that such effort will be unavailing or if the
12 goods have been shipped under reservation and satisfac-
13 tion of the security interest in them has been made or ten-
14 dered.

Sec. 2-717. Deduction of Damages From the Price.—

2 The buyer on notifying the seller of his intention to do so
3 may deduct all or any part of the damages resulting from
4 any breach of the contract from any part of the price still
5 due under the same contract.

Sec. 2-718. Liquidation or Limitation of Damages; De-

2 **posits.—**(1) Damages for breach by either party may be
3 liquidated in the agreement but only at an amount which
4 is reasonable in the light of the anticipated or actual harm
5 caused by the breach, the difficulties of proof of loss, and
6 the inconvenience or non-feasibility of otherwise obtain-
7 ing an adequate remedy. A term fixing unreasonably
8 large liquidated damages is void as a penalty.

9 (2) Where the seller justifiably withholds delivery of
10 goods because of the buyer's breach, the buyer is entitled
11 to restitution of any amount by which the sum of his pay-
12 ments exceeds

13 (a) the amount to which the seller is entitled by virtue
14 of terms liquidating the seller's damages in accordance
15 with subsection (1), or

16 (b) in the absence of such terms, twenty per cent of
17 the value of the total performance for which the buyer is
18 obligated under the contract or \$500, whichever is smaller.

19 (3) The buyer's right to restitution under subsection
20 (2) is subject to offset to the extent that the seller estab-
21 lishes

22 (a) a right to recover damages under the provisions of
23 this article other than subsection (1), and

24 (b) the amount or value of any benefits received by
25 the buyer directly or indirectly by reason of the contract.

26 (4) Where a seller has received payment in goods their
27 reasonable value or the proceeds of their resale shall be
28 treated as payments for the purposes of subsection (2);
29 but if the seller has notice of the buyer's breach before
30 reselling goods received in part performance, his resale is
31 subject to the conditions laid down in this article on resale
32 by an aggrieved seller (Section 2-706).

**Sec. 2-719. Contractual Modification or Limitation of
2 Remedy.**—(1) Subject to the provisions of subsections (2)
3 and (3) of this section and of the preceding section on
4 liquidation and limitation of damages,

5 (a) the agreement may provide for remedies in addi-
6 tion to or in substitution for those provided in this article
7 and may limit or alter the measure of damages recover-
8 able under this article, as by limiting the buyer's remedies
9 to return of the goods and repayment of the price or to
10 repair and replacement of non-conforming goods or parts;
11 and

12 (b) resort to a remedy as provided is optional unless
13 the remedy is expressly agreed to be exclusive, in which
14 case it is the sole remedy.

15 (2) Where circumstances cause an exclusive or limited
16 remedy to fail of its essential purpose, remedy may be had
17 as provided in this article.

18 (3) Consequential damages may be limited or ex-
19 cluded unless the limitation or exclusion is unconscion-
20 able. Limitation of consequential damages for injury to
21 the person in the case of consumer goods is prima facie
22 unconscionable but limitation of damages where the loss
23 is commercial is not.

**Sec. 2-720. Effect of "Cancellation" or "Rescission" on
2 Claims for Antecedent Breach.**—Unless the contrary in-
3 tention clearly appears, expressions of "cancellation" or
4 "rescission" of the contract or the like shall not be con-
5 strued as a renunciation or discharge of any claim in dam-
6 ages for an antecedent breach.

Sec. 2-721. Remedies for Fraud.—Remedies for mater-
2 ial misrepresentation or fraud include all remedies avail-
3 able under this article for non-fraudulent breach. Neither
4 rescission or a claim for rescission of the contract for sale

5 nor rejection or return of the goods shall bar or be deemed
6 inconsistent with a claim for damages or other remedy.

**Sec. 2-722. Who Can Sue Third Parties for Injury to
2 Goods.**—Where a third party so deals with goods which
3 have been identified to a contract for sale as to cause ac-
4 tionable injury to a party to that contract

5 (a) a right of action against the third party is in either
6 party to the contract for sale who has title to or a security
7 interest or a special property or an insurable interest in
8 the goods; and if the goods have been destroyed or con-
9 verted a right of action is also in the party who either
10 bore the risk of loss under the contract for sale or has
11 since the injury assumed that risk as against the other;

12 (b) if at the time of the injury the party plaintiff did
13 not bear the risk of loss as against the other party to the
14 contract for sale and there is no arrangement between
15 them for disposition of the recovery, his suit or settlement
16 is, subject to his own interest, as a fiduciary for the other
17 party to the contract;

18 (c) either party may with the consent of the other sue
19 for the benefit of whom it may concern.

Sec. 2-723. Proof of Market Price: Time and Place.—

2 (1) If an action based on anticipatory repudiation comes
3 to trial before the time for performance with respect to
4 some or all of the goods, any damages based on market
5 price (Section 2-708 or Section 2-713) shall be determined
6 according to the price of such goods prevailing at the time
7 when the aggrieved party learned of the repudiation.

8 (2) If evidence of a price prevailing at the times or
9 places described in this article is not readily available the
10 price prevailing within any reasonable time before or after
11 the time described or at any other place which in commer-
12 cial judgment or under usage of trade would serve as a
13 reasonable substitute for the one described may be used,
14 making any proper allowance for the cost of transporting
15 the goods to or from such other place.

16 (3) Evidence of a relevant price prevailing at a time
17 or place other than the one described in this article offered
18 by one party is not admissible unless and until he has
19 given the other party such notice as the court finds suffi-
20 cient to prevent unfair surprise.

Sec. 2-724. Admissibility of Market Quotations.—When-
2 ever the prevailing price or value of any goods regularly
3 bought and sold in any established commodity market is
4 in issue, reports in official publications or trade journals
5 or in newspapers or periodicals of general circulation pub-
6 lished as the reports of such market shall be admissible in
7 evidence. The circumstances of the preparation of such
8 a report may be shown to affect its weight but not its ad-
9 missibility.

Sec. 2-725. Statute of Limitations in Contracts for Sale.

2 —(1) An action for breach of any contract for sale must
3 be commenced within four years after the cause of action
4 has accrued. By the original agreement the parties may
5 reduce the period of limitation to not less than one year
6 but may not extend it.

7 (2) A cause of action accrues when the breach oc-
8 curs, regardless of the aggrieved party's lack of knowledge
9 of the breach. A breach of warranty occurs when tender
10 of delivery is made, except that where a warranty explic-
11 itly extends to future performance of the goods and dis-
12 covery of the breach must await the time of such perform-
13 ance the cause of action accrues when the breach is or
14 should have been discovered.

15 (3) Where an action commenced within the time lim-
16 ited by subsection (1) is so terminated as to leave avail-
17 able a remedy by another action for the same breach such
18 other action may be commenced after the expiration of
19 the time limited and within six months after the termina-
20 tion of the first action unless the termination resulted
21 from voluntary discontinuance or from dismissal for fail-
22 ure or neglect to prosecute.

23 (4) This section does not alter the law on tolling of the
24 statute of limitations nor does it apply to causes of action
25 which have accrued before this chapter becomes effective.

Article 3. Commercial Paper

PART 1. SHORT TITLE, FORM AND INTERPRETATION

Sec. 3-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Com-
3 mercial Paper.

Sec. 3-102. Definitions and Index of Definitions.—(1)

2 In this article unless the context otherwise requires

3 (a) "Issue" means the first delivery of an instrument
4 to a holder or remitter.

5 (b) An "order" is a direction to pay and must be more
6 than an authorization or request. It must identify the per-
7 son to pay with reasonable certainty. It may be addressed
8 to one or more such persons jointly or in the alternative
9 but not in succession.

10 (c) A "promise" is an undertaking to pay and must be
11 more than an acknowledgment of an obligation.

12 (d) "Secondary party" means a drawer or endorser.

13 (e) "Instrument" means a negotiable instrument.

14 (2) Other definitions applying to this article and the
15 sections in which they appear are:

16 "Acceptance". Section 3-410.

17 "Accommodation party". Section 3-415.

18 "Alteration". Section 3-407.

19 "Certificate of Deposit". Section 3-104.

20 "Certification". Section 3-411.

21 "Check". Section 3-104.

22 "Definite time". Section 3-109.

23 "Dishonor". Section 3-507.

24 "Draft". Section 3-104.

25 "Holder in due course". Section 3-302.

26 "Negotiation". Section 3-202.

27 "Note". Section 3-104.

28 "Notice of dishonor". Section 3-508.

29 "On demand". Section 3-108.

30 "Presentment". Section 3-504.

31 "Protest". Section 3-509.

32 "Restrictive Indorsement". Section 3-205.

33 "Signature". Section 3-401.

34 (3) The following definitions in other articles of this
35 chapter apply to this article:

36 "Account". Section 4-104.

37 "Banking Day". Section 4-104.

38 "Clearing house". Section 4-104.

39 "Collecting bank". Section 4-105.

40 "Customer". Section 4-104.

41 "Depository Bank". Section 4-105.

42 "Documentary Draft". Section 4-104.

43 "Intermediary Bank". Section 4-105.

44 "Item". Section 4-104.

45 "Midnight deadline". Section 4-104.

46 "Payor bank". Section 4-105.

47 (4) In addition Article 1 of this chapter contains gen-
48 eral definitions and principles of construction and inter-
49 pretation applicable throughout this article.

Sec. 3-103. Limitations on Scope of Article.—(1) This
2 article does not apply to money, documents of title or in-
3 vestment securities.

4 (2) The provisions of this article are subject to the pro-
5 visions of the article on Bank Deposits and Collections
6 (Article 4) and Secured Transactions (Article 9) of this
7 chapter.

Sec. 3-104. Form of Negotiable Instruments; "Draft";
2 **"Check"; Certificate of Deposit"; "Note".**—(1) Any writ-
3 ing to be a negotiable instrument within this article must
4 (a) be signed by the maker or drawer; and
5 (b) contain an unconditional promise or order to pay
6 a sum certain in money and no other promise, order, ob-
7 ligation or power given by the maker or drawer except as
8 authorized by this article; and
9 (c) be payable on demand or at a definite time; and
10 (d) be payable to order or to bearer.

11 (2) A writing which complies with the requirements
12 of this section is

13 (a) a "draft" ("bill of exchange") if it is an order;

14 (b) a "check" if it is a draft drawn on a bank and pay-
15 able on demand;

16 (c) a "certificate of deposit" if it is an acknowledgment
17 by a bank of receipt of money with an engagement to re-
18 pay it;

19 (d) a "note" if it is a promise other than a certificate
20 of deposit.

21 (3) As used in other articles of this Chapter, and as
22 the context may require, the terms "draft", "check", "cer-
23 tificate of deposit" and "note" may refer to instruments
24 which are not negotiable within this article as well as to
25 instruments which are so negotiable.

Sec. 3-105. When Promise or Order Unconditional.—

2 (1) A promise or order otherwise unconditional is not
3 made conditional by the fact that the instrument

4 (a) is subject to implied or constructive conditions; or

5 (b) states its consideration, whether performed or
6 promised, or the transaction which gave rise to the instru-
7 ment, or that the promise or order is made or the instru-
8 ment matures in accordance with or "as per" such transac-
9 tion; or

10 (c) refers to or states that it arises out of a separate
11 agreement or refers to a separate agreement for rights as
12 to prepayment or acceleration; or

13 (d) states that it is drawn under a letter of credit; or

14 (e) states that it is secured, whether by mortgage, res-
15 ervation of title or otherwise; or

16 (f) indicates a particular account to be debited or any
17 other fund or source from which reimbursement is ex-
18 pected; or

19 (g) is limited to payment out of a particular fund or
20 the proceeds of a particular source, if the instrument is
21 issued by a government or governmental agency or unit;
22 or

23 (h) is limited to payment out of the entire assets of a
24 partnership, unincorporated association, trust or estate by
25 or on behalf of which the instrument is issued.

26 (2) A promise or order is not unconditional if the in-
27 strument

28 (a) states that it is subject to or governed by any other
29 agreement; or

30 (b) states that it is to be paid only out of a particular
31 fund or source except as provided in this section.

Sec. 3-106. Sum Certain.—(1) The sum payable is a sum

2 certain even though it is to be paid

3 (a) with stated interest or by stated installments; or

4 (b) with stated different rates of interest before and
5 after default or a specified date; or

6 (c) with a stated discount or addition if paid before or
7 after the date fixed for payment; or

8 (d) with exchange or less exchange, whether at a fixed
9 rate or at the current rate; or

10 (e) with costs of collection or an attorney's fee or both
11 upon default.

12 (2) Nothing in this section shall validate any term
13 which is otherwise illegal.

Sec. 3-107. Money.—(1) An instrument is payable in
2 money if the medium of exchange in which it is payable
3 is money at the time the instrument is made. An instru-
4 ment payable in “currency” or “current funds” is payable
5 in money.

6 (2) A promise or order to pay a sum stated in a foreign
7 currency is for a sum certain in money and, unless a dif-
8 ferent medium of payment is specified in the instrument,
9 may be satisfied by payment of that number of dollars
10 which the stated foreign currency will purchase at the
11 buying sight rate for that currency on the day on which
12 the instrument is payable or, if payable on demand, on the
13 day of demand. If such an instrument specifies a foreign
14 currency as the medium of payment the instrument is pay-
15 able in that currency.

Sec. 3-108. Payable on Demand.—Instruments payable
2 on demand include those payable at sight or on presenta-
3 tion and those in which no time for payment is stated.

Sec. 3-109. Definite Time.—(1) An instrument is pay-
2 able at a definite time if by its terms it is payable

3 (a) on or before a stated date or at a fixed period after
4 a stated date; or

5 (b) at a fixed period after sight; or

6 (c) at a definite time subject to any acceleration; or

7 (d) at a definite time subject to extension at the op-
8 tion of the holder, or to extension to a further definite time
9 at the option of the maker or acceptor or automatically
10 upon or after a specified act or event.

11 (2) An instrument which by its terms is otherwise
12 payable only upon an act or event uncertain as to time of
13 occurrence is not payable at a definite time even though
14 the act or event has occurred.

Sec. 3-110. Payable to Order.—(1) An instrument is
2 payable to order when by its terms it is payable to the or-
3 der or assigns of any person therein specified with reason-

4 able certainty, or to him or his order, or when it is con-
5 spicuously designated on its face as "exchange" or the like
6 and names a payee. It may be payable to the order of

- 7 (a) the maker or drawer; or
8 (b) the drawee; or
9 (c) a payee who is not maker, drawer or drawee; or
10 (d) two or more payees together or in the alternative;

11 or

12 (e) an estate, trust or fund, in which case it is payable
13 to the order of the representative of such estate, trust or
14 fund or his successors; or

15 (f) an office, or an officer by his title as such in which
16 case it is payable to the principal but the incumbent of the
17 office or his successors may act as if he or they were the
18 holder; or

19 (g) a partnership or unincorporated association, in
20 which case it is payable to the partnership or association
21 and may be indorsed or transferred by any person thereto
22 authorized.

23 (2) An instrument not payable to order is not made so
24 payable by such words as "payable upon return of this in-
25 strument properly indorsed".

26 (3) An instrument made payable both to order and to
27 bearer is payable to order unless the bearer words are
28 handwritten or typewritten.

Sec. 3-111. Payable to Bearer.—An instrument is pay-
2 able to bearer when by its terms it is payable to

- 3 (a) bearer or the order of bearer; or
4 (b) a specified person or bearer; or
5 (c) "cash" or the order of "cash", or any other indica-
6 tion which does not purport to designate a specific payee.

Sec. 3-112. Terms and Omissions Not Affecting Nego-
2 **tiability.**—(1) The negotiability of an instrument is not
3 affected by

- 4 (a) the omission of a statement of any consideration or
5 of the place where the instrument is drawn or payable; or
6 (b) a statement that collateral has been given to se-
7 cure obligations either on the instrument or otherwise of
8 an obligor on the instrument or that in the case of de-
9 fault on those obligations the holder may realize on or dis-
10 pose of the collateral; or

- 11 (c) a promise or power to maintain or protect collat-
12 eral or to give additional collateral; or
- 13 (d) a term authorizing a confession of judgment on the
14 instrument if it is not paid when due; or
- 15 (e) a term purporting to waive the benefit of any law
16 intended for the advantage or protection of any obligor; or
- 17 (f) a term in a draft providing that the payee by in-
18 dorsing or cashing it acknowledges full satisfaction of an
19 obligation of the drawer; or
- 20 (g) a statement in a draft drawn in a set of parts (Sec-
21 tion 3-801) to the effect that the order is effective only if
22 no other part has been honored.
- 23 (2) Nothing in this section shall validate any term
24 which is otherwise illegal.

Sec. 3-113. Seal.—An instrument otherwise negotiable
2 is within this article even though it is under a seal.

Sec. 3-114. Date, Antedating, Postdating.—(1) The
2 negotiability of an instrument is not affected by the fact
3 that it is undated, antedated or postdated.

4 (2) Where an instrument is antedated or postdated the
5 time when it is payable is determined by the stated date
6 if the instrument is payable on demand or at a fixed period
7 after date.

8 (3) Where the instrument or any signature thereon is
9 dated, the date is presumed to be correct.

Sec. 3-115. Incomplete Instruments.—(1) When a paper
2 whose contents at the time of signing show that it is in-
3 tended to become an instrument is signed while still in-
4 complete in any necessary respect it cannot be enforced
5 until completed, but when it is completed in accordance
6 with authority given it is effective as completed.

7 (2) If the completion is unauthorized the rules as to
8 material alteration apply (Section 3-407), even though the
9 paper was not delivered by the maker or drawer; but the
10 burden of establishing that any completions is unauthor-
11 ized is on the party so asserting.

**Sec. 3-116. Instruments Payable to Two or More Per-
2 sons.**—An instrument payable to the order of two or more
3 persons

- 4 (a) if in the alternative is payable to any one of them
5 and may be negotiated, discharged or enforced by any of
6 of them who has possession of it;
- 7 (b) if not in the alternative is payable to all of them
8 and may be negotiated, discharged or enforced only by all
9 of them.

Sec. 3-117. Instruments Payable With Words of Description.—An instrument made payable to a named person with the addition of words describing him

- 4 (a) as agent or officer of a specified person is payable
5 to his principal but the agent or officer may act as if he
6 were the holder;
- 7 (b) as any other fiduciary for a specified person or purpose
8 is payable to the payee and may be negotiated, discharged
9 or enforced by him;
- 10 (c) in any other manner is payable to the payee un-
11 conditionally and the additional words are without effect
12 on subsequent parties.

Sec. 3-118. Ambiguous Terms and Rules of Construction.—The following rules apply to every instrument:

- 3 (a) Where there is doubt whether the instrument is a
4 draft or a note the holder may treat it as either. A draft
5 drawn on the drawer is effective as a note.
- 6 (b) Handwritten terms control typewritten and
7 printed terms, and typewritten control printed.
- 8 (c) Words control figures except that if the words are
9 ambiguous figures control.
- 10 (d) Unless otherwise specified a provision for interest
11 means interest at the judgment rate at the place of pay-
12 ment from the date of the instrument, or if it is undated
13 from the date of issue.
- 14 (e) Unless the instrument otherwise specifies two or
15 more persons who sign as maker, acceptor or drawer or
16 indorser and as a part of the same transaction are jointly
17 and severally liable even though the instrument contains
18 such words as "I promise to pay".
- 19 (f) Unless otherwise specified consent to extension
20 authorizes a single extension for not longer than the orig-
21 inal period. A consent to extension, expressed in the in-
22 strument, is binding on secondary parties and accommo-

23 dation makers. A holder may not exercise his option to
24 extend an instrument over the objection of a maker or ac-
25 ceptor or other party who in accordance with Section 3-
26 604 tenders full payment when the instrument is due.

Sec. 3-119. Other Writings Affecting Instrument.—(1)

2 As between the obligor and his immediate obligee or any
3 transferee the terms of an instrument may be modified or
4 affected by any other written agreement executed as a
5 part of the same transaction, except that a holder in due
6 course is not affected by any limitation of his rights aris-
7 ing out of the separate written agreement if he had no no-
8 tice of the limitation when he took the instrument.

9 (2) A separate agreement does not affect the negoti-
10 ability of an instrument.

Sec. 3-120. Instruments "Payable Through" Bank.—An

2 instrument which states that it is "payable through" a
3 bank or the like designates that bank as a collecting bank
4 to make presentment but does not of itself authorize the
5 bank to pay the instrument.

Sec. 3-121. Instruments Payable at Bank.—A note or

2 acceptance which states that it is payable at a bank is not
3 of itself an order or authorization to the bank to pay it.

Sec. 3-122. Accrual of Cause of Action.—(1) A cause

2 of action against a maker or an acceptor accrues

3 (a) in the case of a time instrument on the day after
4 maturity;

5 (b) in the case of a demand instrument upon its date
6 or, if no date is stated, on the date of issue.

7 (2) A cause of action against the obligor of a demand
8 or time certificate of deposit accrues upon demand, but de-
9 mand on a time certificate may not be made until on or
10 after the date of maturity.

11 (3) A cause of action against a drawer of a draft or an
12 indorser of any instrument accrues upon demand follow-
13 ing dishonor of the instrument. Notice of dishonor is a
14 demand.

15 (4) Unless an instrument provides otherwise, interest
16 runs at the rate provided by law for a judgment

17 (a) in the case of a maker, acceptor or other primary
18 obligor of a demand instrument, from the date of demand;

19 (b) in all other cases from the date of accrual of the
20 cause of action.

PART 2. TRANSFER AND NEGOTIATION

Sec. 3-201. Transfer: Right to Indorsement.—(1) Trans-
2 fer of an instrument vests in the transferee such rights
3 as the transferor has therein, except that a transferee
4 who has himself been a party to any fraud or illegality
5 affecting the instrument or who as a prior holder had
6 notice of a defense or claim against it cannot improve
7 his position by taking from a later holder in due course.

8 (2) A transfer of a security interest in an instru-
9 ment vests the foregoing rights in the transferee to the
10 extent of the interest transferred.

11 (3) Unless otherwise agreed any transfer for value
12 of an instrument not then payable to bearer gives the
13 transferee the specifically enforceable right to have the
14 unqualified indorsement of the transferor. Negotiation
15 takes effect only when the indorsement is made and un-
16 til that time there is no presumption that the transferee
17 is the owner.

Sec. 3-202. Negotiation.—(1) Negotiation is the trans-
2 fer of an instrument in such form that the transferee be-
3 comes a holder. If the instrument is payable to order
4 it is negotiated by delivery with any necessary indorse-
5 ment; if payable to bearer it is negotiated by delivery.

6 (2) An indorsement must be written by or on be-
7 half of the holder and on the instrument or on a paper
8 so firmly affixed thereto as to become a part thereof.

9 (3) An indorsement is effective for negotiation
10 only when it conveys the entire instrument or any un-
11 paid residue. If it purports to be of less it operates only
12 as a partial assignment.

13 (4) Words of assignment, condition, waiver, guar-
14 anty, limitation or disclaimer of liability and the like ac-
15 companying an indorsement do not affect its character
16 as an indorsement.

Sec. 3-203. Wrong or Misspelled Name.—Where an in-
2 strument is made payable to a person under a misspelled
3 name or one other than his own he may indorse in that

4 name or his own or both; but signature in both names
5 may be required by a person paying or giving value
6 for the instrument.

Sec. 3-204. Special Indorsement; Blank Indorsement.—

2 (1) A special indorsement specifies the person to whom
3 or to whose order it makes the instrument payable.
4 Any instrument specially indorsed becomes payable to
5 the order of the special indorsee and may be further
6 negotiated only by his indorsement.

7 (2) An indorsement in blank specifies no particular
8 indorsee and may consist of a mere signature. An in-
9 strument payable to order and indorsed in blank be-
10 comes payable to bearer and may be negotiated by
11 delivery alone until specially indorsed.

12 (3) The holder may convert a blank indorsement
13 into a special indorsement by writing over the signa-
14 ture of the indorser in blank any contract consistent
15 with the character of the indorsement.

Sec. 3-205. Restrictive Indorsements.—An indorsement

2 is restrictive which either

3 (a) is conditional; or

4 (b) purports to prohibit further transfer of the in-
5 strument; or

6 (c) includes the words "for collection", "for de-
7 posit", "pay any bank", or like terms signifying a pur-
8 pose of deposit or collection; or

9 (d) otherwise states that it is for the benefit or use
10 of the indorser or of another person.

Sec. 3-206. Effect of Restrictive Indorsement.—(1) No
2 restrictive indorsement prevents further transfer or
3 negotiation of the instrument.

4 (2) An intermediary bank, or a payor bank which
5 is not the depositary bank, is neither given notice nor
6 otherwise affected by a restrictive indorsement of any
7 person except the bank's immediate transferor or the
8 person presenting for payment.

9 (3) Except for an intermediary bank, any transferee
10 under an indorsement which is conditional or includes
11 the words "for collection", "for deposit", "pay any
12 bank", or like terms (subparagraphs (a) and (c) of Sec-

13 tion 3-205) must pay or apply any value given by him for
14 or on the security of the instrument consistently with
15 the indorsement and to the extent that he does so he
16 becomes a holder for value. In addition such transferee
17 is a holder in due course if he otherwise complies with
18 the requirements of Section 3-302 on what constitutes
19 a holder in due course.

20 (4) The first taker under an indorsement for the
21 benefit of the indorser or another person (subparagraph
22 (d) of Section 3-205) must pay or apply any value given
23 by him for or on the security of the instrument consist-
24 ently with the indorsement and to the extent that he
25 does so he becomes a holder for value. In addition such
26 taker is a holder in due course if he otherwise complies
27 with the requirements of Section 3-302 on what consti-
28 tutes a holder in due course. A later holder for value is
29 neither given notice nor otherwise affected by such re-
30 strictive indorsement unless he has knowledge that a
31 fiduciary or other person has negotiated the instrument
32 in any transaction for his own benefit or otherwise in
33 breach of duty (subsection (2) of Section 3-304).

Sec. 3-207. Negotiation Effective Although It May Be

2 **Rescinded.**—(1) Negotiation is effective to transfer the
3 instrument although the negotiation is

4 (a) made by an infant, a corporation exceeding its
5 powers, or any other person without capacity; or

6 (b) obtained by fraud, duress or mistake of any kind,
7 or

8 (c) part of an illegal transaction; or

9 (d) made in breach of duty.

10 (2) Except as against a subsequent holder in due
11 course such negotiation is in an appropriate case sub-
12 ject to rescission, the declaration of a constructive trust
13 or any other remedy permitted by law.

Sec. 3-208. Reacquisition.—Where an instrument is re-

2 turned to or reacquired by a prior party he may cancel
3 any indorsement which is not necessary to his title and
4 reissue or further negotiate the instrument, but any in-
5 tervening party is discharged as against the reacquiring
6 party and subsequent holders not in due course and if

7 his indorsement has been cancelled is discharged as
8 against subsequent holders in due course as well.

PART 3. RIGHTS OF A HOLDER

Sec. 3-301. Rights of a Holder.—The holder of an in-
2 strument whether or not he is the owner may transfer
3 or negotiate it and, except as otherwise provided in Sec-
4 tion 3-603 on payment or satisfaction, discharge it or
5 enforce payment in his own name.

Sec. 3-302. Holder in Due Course.—(1) A holder in due
2 course is a holder who takes the instrument
3 (a) for value; and
4 (b) in good faith; and
5 (c) without notice that it is overdue or has been dis-
6 honored or of any defense against or claim to it on the part
7 of any person.
8 (2) A payee may be a holder in due course.
9 (3) A holder does not become a holder in due course
10 of an instrument:
11 (a) by purchase of it at judicial sale or by taking it un-
12 der legal process; or
13 (b) by acquiring it in taking over an estate; or
14 (c) by purchasing it as part of a bulk transaction not
15 in regular course of business of the transferor.
16 (4) A purchaser of a limited interest can be a holder
17 in due course only to the extent of the interest purchased.

Sec. 3-303. Taking for Value.—A holder takes the in-
2 strument for value
3 (a) to the extent that the agreed consideration has
4 been performed or that he acquires a security interest in
5 or a lien on the instrument otherwise than by legal pro-
6 cess; or
7 (b) when he takes the instrument in payment of or as
8 security for an antecedent claim against any person
9 whether or not the claim is due; or
10 (c) when he gives a negotiable instrument for it or
11 makes an irrevocable commitment to a third person.

Sec. 3-304. Notice to Purchaser.—(1) The purchaser
2 has notice of a claim or defense if

3 (a) the instrument is so incomplete, bears such visible
4 evidence of forgery or alteration, or is otherwise so irreg-
5 ular as to call into question its validity, terms or owner-
6 ship or to create an ambiguity as to the party to pay; or

7 (b) the purchaser has notice that the obligation of any
8 party is voidable in whole or in part, or that all parties
9 have been discharged.

10 (2) The purchaser has notice of a claim against the
11 instrument when he has knowledge that a fiduciary has
12 negotiated the instrument in payment of or as security for
13 his own debt or in any transaction for his own benefit or
14 otherwise in breach of duty.

15 (3) The purchaser has notice that an instrument is
16 overdue if he has reason to know

17 (a) that any part of the principal amount is overdue
18 or that there is an uncured default in payment of another
19 instrument of the same series; or

20 (b) that acceleration of the instrument has been made;
21 or

22 (c) that he is taking a demand instrument after de-
23 mand has been made or more than a reasonable length of
24 time after its issue. A reasonable time for a check drawn
25 and payable within the states and territories of the United
26 States and the District of Columbia is presumed to be
27 thirty days.

28 (4) Knowledge of the following facts does not of itself
29 give the purchaser notice of a defense or claim

30 (a) that the instrument is antedated or postdated;

31 (b) that it was issued or negotiated in return for an
32 executory promise or accompanied by a separate agree-
33 ment, unless the purchaser has notice that a defense or
34 claim has arisen from the terms thereof;

35 (c) that any party has signed for accommodation;

36 (d) that an incomplete instrument has been com-
37 pleted, unless the purchaser has notice of any improper
38 completion;

39 (e) that any person negotiating the instrument is or
40 was a fiduciary;

41 (f) that there has been default in payment of interest
42 on the instrument or in payment of any other instrument,
43 except one of the same series.

44 (5) The filing or recording of a document does not of
45 itself constitute notice within the provisions of this article
46 to a person who would otherwise be a holder in due course.

47 (6) To be effective notice must be received at such
48 time and in such manner as to give a reasonable opportu-
49 nity to act on it.

Sec. 3-305. Rights of a Holder in Due Course.—To the
2 extent that a holder is a holder in due course he takes the
3 instrument free from

- 4 (1) all claims to it on the part of any person; and
5 (2) all defenses of any party to the instrument with
6 whom the holder has not dealt except
7 (a) infancy, to the extent that it is a defense to a sim-
8 ple contract; and
9 (b) such other incapacity, or duress, or illegality of the
10 transaction, as renders the obligation of the party a nul-
11 lity; and
12 (c) such misrepresentation as has induced the party
13 to sign the instrument with neither knowledge nor rea-
14 sonable opportunity to obtain knowledge of its character
15 or its essential terms; and
16 (d) discharge in insolvency proceedings; and
17 (e) any other discharge of which the holder has notice
18 when he takes the instrument.

Sec. 3-306. Rights of One Not Holder in Due Course.—
2 Unless he has the rights of a holder in due course any per-
3 son takes the instrument subject to
4 (a) all valid claims to it on the part of any person; and
5 (b) all defenses of any party which would be available
6 in an action on a simple contract; and
7 (c) the defenses of want or failure of consideration,
8 non-performance of any condition precedent, non-deliv-
9 ery, or delivery for a special purpose (Section 3-408); and
10 (d) the defense that he or a person through whom he
11 holds the instrument acquired it by theft, or that payment
12 or satisfaction to such holder would be inconsistent with
13 the terms of a restrictive indorsement. The claim of any
14 third person to the instrument is not otherwise available
15 as a defense to any party liable thereon unless the third
16 person himself defends the action for such party.

Sec. 3-307. Burden of Establishing Signatures, Defenses and Due Course.—(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

PART 4. LIABILITY OF PARTIES

Sec. 3-401. Signature.—(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

Sec. 3-402. Signature in Ambiguous Capacity.—Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

Sec. 3-403. Signature by Authorized Representative.—(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the

14 representative signed in a representative capacity, or if
15 the instrument does not name the person represented but
16 does show that the representative signed in a represent-
17 ative capacity.

18 (3) Except as otherwise established the name of an or-
19 ganization preceded or followed by the name and office of
20 an authorized individual is a signature made in a repre-
21 sentative capacity.

Sec. 3-404. Unauthorized Signatures.—(1) Any unauth-
2 orized signature is wholly inoperative as that of the per-
3 son whose name is signed unless he ratifies it or is pre-
4 cluded from denying it; but it operates as the signature of
5 the unauthorized signer in favor of any person who in
6 good faith pays the instrument or takes it for value.

7 (2) Any unauthorized signature may be ratified for all
8 purposes of this article. Such ratification does not of it-
9 self affect any rights of the person ratifying against the
10 actual signer.

Sec. 3-405. Impostors; Signature in Name of Payee.—

2 (1) An indorsement by any person in the name of a
3 named payee is effective if

4 (a) an impostor by use of the mails or otherwise has
5 induced the maker or drawer to issue the instrument to
6 him or his confederate in the name of the payee; or

7 (b) a person signing as or on behalf of a maker or
8 drawer intends the payee to have no interest in the instru-
9 ment; or

10 (c) an agent or employee of the maker or drawer has
11 supplied him with the name of the payee intending the
12 latter to have no such interest.

13 (2) Nothing in this section shall affect the criminal or
14 civil liability of the person so indorsing.

**Sec. 3-406. Negligence Contributing to Alteration or
2 Unauthorized Signature.**—Any person who by his negli-
3 gence substantially contributes to a material alteration
4 of the instrument or to the making of an unauthorized
5 signature is precluded from asserting the alteration or
6 lack of authority against a holder in due course or
7 against a drawee or other payor who pays the instru-
8 ment in good faith and in accordance with the reason-

9 able commercial standards of the drawee's or payor's
10 business.

Sec. 3-407. Alteration.—(1) Any alteration of an instru-
2 ment is material which changes the contract of any
3 party thereto in any respect, including any such change
4 in
5 (a) the number or relations of the parties; or
6 (b) an incomplete instrument, by completing it other-
7 wise than as authorized; or
8 (c) the writing as signed, by adding to it or by re-
9 moving any part of it.
10 (2) As against any person other than a subsequent
11 holder in due course
12 (a) alteration by the holder which is both fraud-
13 ulent and material discharges any party whose contract
14 is thereby changed unless that party assents or is pre-
15 cluded from asserting the defense;
16 (b) no other alteration discharges any party and the
17 instrument may be enforced according to its original
18 tenor, or as to incomplete instruments according to the
19 authority given.
20 (3) A subsequent holder in due course may in all
21 cases enforce the instrument according to its original
22 tenor, and when an incomplete instrument has been com-
23 pleted, he may enforce it as completed.

Sec. 3-408. Consideration.—Want or failure of consider-
2 ation is a defense as against any person not having the
3 rights of a holder in due course (Section 3-305), except
4 that no consideration is necessary for an instrument or
5 obligation thereon given in payment of or as security
6 for an antecedent obligation of any kind. Nothing in
7 this section shall be taken to displace any statute out-
8 side this Chapter under which a promise is enforceable
9 notwithstanding lack or failure of consideration. Partial
10 failure of consideration is a defense pro tanto whether
11 or not the failure is in an ascertained or liquidated
12 amount.

Sec. 3-409. Draft Not an Assignment.—(1) A check or
2 other draft does not of itself operate as an assignment
3 of any funds in the hands of the drawee available for its

4 payment, and the drawee is not liable on the instrument
5 until he accepts it.

6 (2) Nothing in this section shall affect any liability
7 in contract, tort or otherwise arising from any letter of
8 credit or other obligation or representation which is not
9 an acceptance.

Sec. 3-410. Definition and Operation of Acceptance.—

2 (1) Acceptance is the drawee's signed engagement to
3 honor the draft as presented. It must be written on the
4 draft, and may consist of his signature alone. It becomes
5 operative when completed by delivery or notification.

6 (2) A draft may be accepted although it has not been
7 signed by the drawer or is otherwise incomplete or is
8 overdue or has been dishonored.

9 (3) Where the draft is payable at a fixed period after
10 sight and the acceptor fails to date his acceptance the
11 holder may complete it by supplying a date in good faith.

Sec. 3-411. Certification of a Check.—(1) Certification

2 of a check is acceptance. Where a holder procures cer-
3 tification the drawer and all prior indorsers are dis-
4 charged.

5 (2) Unless otherwise agreed a bank has no obliga-
6 tion to certify a check.

7 (3) A bank may certify a check before returning it
8 for lack of proper indorsement. If it does so the drawer
9 is discharged.

Sec. 3-412. Acceptance Varying Draft.—(1) Where the

2 drawee's proffered acceptance in any manner varies the
3 draft as presented the holder may refuse the acceptance
4 and treat the draft as dishonored in which case the
5 drawee is entitled to have his acceptance cancelled.

6 (2) The terms of the draft are not varied by an ac-
7 ceptance to pay at any particular bank or place in the
8 United States, unless the acceptance states that the
9 draft is to be paid only at such bank or place.

10 (3) Where the holder assents to an acceptance vary-
11 ing the terms of the draft each drawer and indorser who
12 does not affirmatively assent is discharged.

Sec. 3-413. Contract of Maker, Drawer and Acceptor.—

2 (1) The maker or acceptor engages that he will pay the

3 instrument according to its tenor at the time of his en-
4 gagement or as completed pursuant to Section 3-115 on
5 incomplete instruments.

6 (2) The drawer engages that upon dishonor of the
7 draft and any necessary notice of dishonor or protest he
8 will pay the amount of the draft to the holder or to any
9 indorser who takes it up. The drawer may disclaim this
10 liability by drawing without recourse.

11 (3) By making, drawing or accepting the party ad-
12 mits as against all subsequent parties including the
13 drawee the existence of the payee and his then capacity
14 to indorse.

Sec. 3-414. Contract of Indorser; Order of Liability.—

2 (1) Unless the indorsement otherwise specifies (as by
3 such words as "without recourse") every indorser en-
4 gages that upon dishonor and any necessary notice of
5 dishonor and protest he will pay the instrument accord-
6 ing to its tenor at the time of his indorsement to the
7 holder or to any subsequent indorser who takes it up,
8 even though the indorser who takes it up was not obli-
9 gated to do so.

10 (2) Unless they otherwise agree indorsers are liable
11 to one another in the order in which they indorse, which
12 is presumed to be the order in which their signatures
13 appear on the instrument.

Sec. 3-415. Contract of Accommodation Party.—(1) An

2 accommodation party is one who signs the instrument
3 in any capacity for the purpose of lending his name to
4 another party to it.

5 (2) When the instrument has been taken for value
6 before it is due the accommodation party is liable in the
7 capacity in which he has signed even though the taker
8 knows of the accommodation.

9 (3) As against a holder in due course and without
10 notice of the accommodation oral proof of the accommo-
11 dation is not admissible to give the accommodation party
12 the benefit of discharges dependent on his character as
13 such. In other cases the accommodation character may
14 be shown by oral proof.

15 (4) An indorsement which shows that it is not in the
16 chain of title is notice of its accommodation character.

17 (5) An accommodation party is not liable to the party
18 accommodated, and if he pays the instrument has a right
19 of recourse on the instrument against such party.

Sec. 3-416. Contract of Guarantor.—(1) “Payment
2 guaranteed” or equivalent words added to a signature
3 mean that the signer engages that if the instrument is
4 not paid when due he will pay it according to its tenor
5 without resort by the holder to any other party.

6 (2) “Collection guaranteed” or equivalent words
7 added to a signature mean that the signer engages that
8 if the instrument is not paid when due he will pay it
9 according to its tenor, but only after the holder has re-
10 duced his claim against the maker or acceptor to judg-
11 ment and execution has been returned unsatisfied, or
12 after the maker or acceptor has become insolvent or it
13 is otherwise apparent that it is useless to proceed
14 against him.

15 (3) Words of guaranty which do not otherwise spec-
16 ify guarantee payment.

17 (4) No words of guaranty added to the signature of
18 a sole maker or acceptor affect his liability on the in-
19 strument. Such words added to the signature of one of
20 two or more makers or acceptors create a presumption
21 that the signature is for the accommodation of the others.

22 (5) When words of guaranty are used presentment,
23 notice of dishonor and protest are not necessary to charge
24 the user.

25 (6) Any guaranty written on the instrument is en-
26 forceable notwithstanding any statute of frauds.

Sec. 3-417. Warranties on Presentment and Transfer.—

2 (1) Any person who obtains payment or acceptance
3 and any prior transferor warrants to a person who in
4 good faith pays or accepts that

5 (a) he has a good title to the instrument or is auth-
6 orized to obtain payment or acceptance on behalf of one
7 who has a good title; and

8 (b) he has no knowledge that the signature of the
9 maker or drawer is unauthorized, except that this war-

10 ranty is not given by a holder in due course acting in
11 good faith

12 (i) to a maker with respect to the maker's own sig-
13 nature; or

14 (ii) to a drawer with respect to the drawer's own
15 signature, whether or not the drawer is also the drawee;
16 or

17 (iii) to an acceptor of a draft if the holder in due
18 course took the draft after the acceptance or obtained
19 the acceptance without knowledge that the drawer's sig-
20 nature was unauthorized; and

21 (c) the instrument has not been materially altered,
22 except that this warranty is not given by a holder in
23 due course acting in good faith

24 (i) to the maker of a note; or

25 (ii) to the drawer of a draft whether or not the
26 drawer is also the drawee; or

27 (iii) to the acceptor of a draft with respect to an alter-
28 ation made prior to the acceptance if the holder in due
29 course took the draft after the acceptance, even though
30 the acceptance provided "payable as originally drawn"
31 or equivalent terms; or

32 (iv) to the acceptor of a draft with respect to an
33 alteration made after the acceptance.

34 (2) Any person who transfers an instrument and
35 receives consideration warrants to his transferee and if
36 the transfer is by indorsement to any subsequent holder
37 who takes the instrument in good faith that

38 (a) he has a good title to the instrument or is auth-
39 orized to obtain payment or acceptance on behalf of one
40 who has a good title and the transfer is otherwise right-
41 ful; and

42 (b) all signatures are genuine or authorized; and

43 (c) the instrument has not been materially altered;
44 and

45 (d) no defense of any party is good against him; and

46 (e) he has no knowledge of any insolvency proceed-
47 ing instituted with respect to the maker or acceptor or
48 the drawer of an unaccepted instrument.

49 (3) By transferring "without recourse" the trans-

50 feror limits the obligation stated in subsection (2) (d)
51 to a warranty that he has no knowledge of such a defense.
52 (4) A selling agent or broker who does not disclose
53 the fact that he is acting only as such gives the war-
54 ranties provided in this section, but if he makes such dis-
55 closure warrants only his good faith and authority.

Sec. 3-418. Finality of Payment or Acceptance.—Except
2 for recovery of bank payments as provided in the article
3 on Bank Deposits and Collections (Article 4) and ex-
4 cept for liability for breach of warranty on present-
5 ment under the preceding section, payment or accept-
6 ance of any instrument is final in favor of a holder in
7 due course, or a person who has in good faith changed
8 his position in reliance on the payment.

Sec. 3-419. Conversion of Instrument; Innocent Repre-
2 **sentative.**—(1) An instrument is converted when
3 (a) a drawee to whom it is delivered for acceptance
4 refuses to return it on demand; or
5 (b) any person to whom it is delivered for payment
6 refuses on demand either to pay or to return it; or
7 (c) it is paid on a forged indorsement.
8 (2) In an action against a drawee under subsection
9 (1) the measure of the drawee's liability is the face
10 amount of the instrument. In any other action under
11 subsection (1) the measure of liability is presumed to be
12 the face amount of the instrument.
13 (3) Subject to the provisions of this chapter concern-
14 ing restrictive indorsements a representative, including
15 a depositary or collecting bank, who has in good faith
16 and in accordance with the reasonable commercial
17 standards applicable to the business of such represen-
18 tative dealt with an instrument or its proceeds on be-
19 half of one who was not the true owner is not liable in
20 conversion or otherwise to the true owner beyond the
21 amount of any proceeds remaining in his hands.
22 (4) An intermediary bank or payor bank which is
23 not a depositary bank is not liable in conversion solely
24 by reason of the fact that proceeds of an item in-
25 dorsed restrictively (Sections 3-205 and 3-206) are not
26 paid or applied consistently with the restrictive indorse-
27 ment of an indorser other than its immediate transferor.

PART 5. PRESENTMENT, NOTICE OF DISHONOR AND
PROTEST

**Sec. 3-501. When Presentment, Notice of Dishonor, and
2 Protest Necessary or Permissible.**—(1) Unless excused
3 (Section 3-511) presentment is necessary to charge sec-
4 ondary parties as follows:

5 (a) presentment for acceptance is necessary to
6 charge the drawer and indorsers of a draft where the
7 draft so provides, or is payable elsewhere than at the
8 residence or place of business of the drawee, or its date
9 of payment depends upon such presentment. The holder
10 may at his option present for acceptance any other
11 draft payable at a stated date;

12 (b) presentment for payment is necessary to charge
13 any indorser;

14 (c) in the case of any drawer, the acceptor of a
15 draft payable at a bank or the maker of a note payable
16 at a bank, presentment for payment is necessary, but
17 failure to make presentment discharges such drawer,
18 acceptor or maker only as stated in Section 3-502 (1) (b).

19 (2) Unless excused (Section 3-511)

20 (a) notice of any dishonor is necessary to charge
21 any indorser;

22 (b) in the case of any drawer, the acceptor of a draft
23 payable at a bank or the maker of a note payable at a
24 bank, notice of any dishonor is necessary, but failure
25 to give such notice discharges such drawer, acceptor or
26 maker only as stated in Section 3-502 (1) (b).

27 (3) Unless excused (Section 3-511) protest of any
28 dishonor is necessary to charge the drawer and indor-
29 sers of any draft which on its face appears to be drawn
30 or payable outside of the states and territories of the
31 United States and the District of Columbia. The holder
32 may at his option make protest of any dishonor of any
33 other instrument and in the case of a foreign draft may
34 on insolvency of the acceptor before maturity make pro-
35 test for better security.

36 (4) Notwithstanding any provision of this section,
37 neither presentment nor notice of dishonor nor protest
38 is necessary to charge an indorser who has indorsed an
39 instrument after maturity.

Sec. 3-502. Unexcused Delay; Discharge.—(1) Where
2 without excuse any necessary presentment or notice of
3 dishonor is delayed beyond the time when it is due
4 (a) any indorser is discharged; and
5 (b) any drawer or the acceptor of a draft payable
6 at a bank or the maker of a note payable at a bank who
7 because the drawee or payor bank becomes insolvent
8 during the delay is deprived of funds maintained with
9 the drawee or payor bank to cover the instrument may
10 discharge his liability by written assignment to the
11 holder of his rights against the drawee or payor bank in
12 respect of such funds, but such drawer, acceptor or
13 maker is not otherwise discharged.
14 (2) Where without excuse a necessary protest is
15 delayed beyond the time when it is due any drawer or
16 indorser is discharged.

Sec. 3-503. Time of Presentment.—(1) Unless a differ-
2 ent time is expressed in the instrument the time for any
3 presentment is determined as follows:
4 (a) where an instrument is payable at or a fixed period
5 after a stated date any presentment for acceptance must
6 be made on or before the date it is payable;
7 (b) where an instrument is payable after sight it must
8 either be presented for acceptance or negotiated within
9 a reasonable time after date or issue whichever is later;
10 (c) where an instrument shows the date on which it
11 is payable presentment for payment is due on that date;
12 (d) where an instrument is accelerated presentment
13 for payment is due within a reasonable time after the ac-
14 celeration;
15 (e) with respect to the liability of any secondary
16 party presentment for acceptance or payment of any other
17 instrument is due within a reasonable time after such
18 party becomes liable thereon.
19 (2) A reasonable time for presentment is determined
20 by the nature of the instrument, any usage of banking or
21 trade and the facts of the particular case. In the case of
22 an uncertified check which is drawn and payable within
23 the United States and which is not a draft drawn by a
24 bank the following are presumed to be reasonable periods

25 within which to present for payment or to initiate bank
26 collection:

27 (a) with respect to the liability of the drawer, thirty
28 days after date or issue whichever is later; and

29 (b) with respect to the liability of an indorser, seven
30 days after his indorsement.

31 (3) Where any presentment is due on a day which is
32 not a full business day for either the person making pre-
33 sentment or the party to pay or accept, presentment is due
34 on the next following day which is a full business day for
35 both parties.

36 (4) Presentment to be sufficient must be made at a
37 reasonable hour, and if at a bank during its banking day.

Sec. 3-504. How Presentment Made.—(1) Presentment
2 is a demand for acceptance or payment made upon the
3 maker, acceptor, drawee or other payor by or on behalf
4 of the holder.

5 (2) Presentment may be made

6 (a) by mail, in which event the time of presentment
7 is determined by the time of receipt of the mail; or

8 (b) through a clearing house; or

9 (c) at the place of acceptance or payment specified in
10 the instrument or if there be none at the place of business
11 or residence of the party to accept or pay. If neither the
12 party to accept or pay nor anyone authorized to act for
13 him is present or accessible at such place presentment is
14 excused.

15 (3) It may be made

16 (a) to any one of two or more makers, acceptors,
17 drawees or other payors; or

18 (b) to any person who has authority to make or refuse
19 the acceptance or payment.

20 (4) A draft accepted or a note made payable at a bank
21 in the United States must be presented at such bank.

22 (5) In the cases described in Section 4-210 presentment
23 may be made in the manner and with the result stated in
24 that section.

**Sec. 3-505. Rights of Party to Whom Presentment Is
2 Made.**—(1) The party to whom presentment is made may
3 without dishonor require

- 4 (a) exhibition of the instrument; and
5 (b) reasonable identification of the person making
6 presentment and evidence of his authority to make it if
7 made for another; and
8 (c) that the instrument be produced for acceptance or
9 payment at a place specified in it, or if there be none at
10 any place reasonable in the circumstances; and
11 (d) a signed receipt on the instrument for any partial
12 or full payment and its surrender upon full payment. .
13 (2) Failure to comply with any such requirement in-
14 validates the presentment but the person presenting has
15 a reasonable time in which to comply and the time for
16 acceptance or payment runs from the time of compliance.

Sec. 3-506. Time Allowed for Acceptance or Payment.—

- 2 (1) Acceptance may be deferred without dishonor until
3 the close of the next business day following presentment.
4 The holder may also in a good faith effort to obtain ac-
5 ceptance and without either dishonor of the instrument
6 or discharge of secondary parties allow postponement of
7 acceptance for an additional business day.
8 (2) Except as a longer time is allowed in the case of
9 documentary drafts drawn under a letter of credit, and
10 unless an earlier time is agreed to by the party to pay,
11 payment of an instrument may be deferred without dis-
12 honor pending reasonable examination to determine
13 whether it is properly payable, but payment must be made
14 in any event before the close of business on the day of
15 presentment.

**Sec. 3-507. Dishonor; Holder's Right of Recourse; Term
2 Allowing Re-Presentment.—**(1) An instrument is dishon-
3 ored when

- 4 (a) a necessary or optional presentment is duly made
5 and due acceptance or payment is refused or cannot be
6 obtained within the prescribed time or in case of bank col-
7 lections the instrument is seasonably returned by the
8 midnight deadline (Section 4-301); or
9 (b) presentment is excused and the instrument is not
10 duly accepted or paid.
11 (2) Subject to any necessary notice of dishonor and
12 protest, the holder has upon dishonor an immediate right
13 of recourse against the drawers and indorsers.

14 (3) Return of an instrument for lack of proper in-
15 dorsement is not dishonor.

16 (4) A term in a draft or an indorsement thereof al-
17 lowing a stated time for re-presentment in the event of
18 any dishonor of the draft by nonacceptance if a time draft
19 or by nonpayment if a sight draft gives the holder as
20 against any secondary party bound by the term an option
21 to waive the dishonor without affecting the liability of the
22 secondary party and he may present again up to the end
23 of the stated time.

Sec. 3-508. Notice of Dishonor.—(1) Notice of dishonor
2 may be given to any person who may be liable on the in-
3 strument by or on behalf of the holder or any party who
4 has himself received notice, or any other party who can
5 be compelled to pay the instrument. In addition an agent
6 or bank in whose hands the instrument is dishonored may
7 give notice to his principal or customer or to another
8 agent or bank from which the instrument was received.

9 (2) Any necessary notice must be given by a bank be-
10 fore its midnight deadline and by any other person before
11 midnight of the third business day after dishonor or re-
12 ceipt of notice of dishonor.

13 (3) Notice may be given in any reasonable manner.
14 It may be oral or written and in any terms which identify
15 the instrument and state that it has been dishonored. A
16 misdescription which does not mislead the party notified
17 does not vitiate the notice. Sending the instrument bear-
18 ing a stamp, ticket or writing stating that acceptance or
19 payment has been refused or sending a notice of debit
20 with respect to the instrument is sufficient.

21 (4) Written notice is given when sent although it is
22 not received.

23 (5) Notice to one partner is notice to each although
24 the firm has been dissolved.

25 (6) When any party is in insolvency proceedings in-
26 stituted after the issue of the instrument notice may be
27 given either to the party or to the representative of his
28 estate.

29 (7) When any party is dead or incompetent notice
30 may be sent to his last known address or given to his per-
31 sonal representative.

32 (8) Notice operates for the benefit of all parties who
33 have rights on the instrument against the party notified.

Sec. 3-509. Protest; Noting for Protest.—(1) A protest
2 is a certificate of dishonor made under the hand and seal
3 of a United States consul or vice consul or a notary pub-
4 lic or other person authorized to certify dishonor by the
5 law of the place where dishonor occurs. It may be made
6 upon information satisfactory to such person.

7 (2) The protest must identify the instrument and cer-
8 tify either that due presentment has been made or the rea-
9 son why it is excused and that the instrument has been
10 dishonored by nonacceptance or nonpayment.

11 (3) The protest may also certify that notice of dis-
12 honor has been given to all parties or to specified parties.

13 (4) Subject to subsection (5) any necessary protest is
14 due by the time that notice of dishonor is due.

15 (5) If, before protest is due, an instrument has been
16 noted for protest by the officer to make protest, the pro-
17 test may be made at any time thereafter as of the date of
18 the noting.

Sec. 3-510. Evidence of Dishonor and Notice of Dis-
2 **honor.**—The following are admissible as evidence and
3 create a presumption of dishonor and of any notice of dis-
4 honor therein shown:

5 (a) a document regular in form as provided in the
6 preceding section which purports to be a protest;

7 (b) the purported stamp or writing of the drawee,
8 payor bank or presenting bank on the instrument or ac-
9 companying it stating that acceptance or payment has
10 been refused for reasons consistent with dishonor;

11 (c) any book or record of the drawee, payor bank, or
12 any collecting bank kept in the usual course of business
13 which shows dishonor, even though there is no evidence
14 of who made the entry.

Sec. 3-511. Waived or Excused Presentment, Protest or
2 **Notice of Dishonor or Delay Therein.**—(1) Delay in pre-
3 sentment, protest or notice of dishonor is excused when
4 the party is without notice that it is due or when the de-
5 lay is caused by circumstances beyond his control and he

6 exercises reasonable diligence after the cause of the delay
7 ceases to operate.

8 (2) Presentment or notice or protest as the case may
9 be is entirely excused when

10 (a) the party to be charged has waived it expressly
11 or by implication either before or after it is due; or

12 (b) such party has himself dishonored the instrument
13 or has countermanded payment or otherwise has no rea-
14 son to expect or right to require that the instrument be
15 accepted or paid; or

16 (c) by reasonable diligence the presentment or pro-
17 test cannot be made or the notice given.

18 (3) Presentment is also entirely excused when

19 (a) the maker, acceptor or drawee of any instrument
20 except a documentary draft is dead or in insolvency pro-
21 ceedings instituted after the issue of the instrument; or

22 (b) acceptance or payment is refused but not for want
23 of proper presentment.

24 (4) Where a draft has been dishonored by nonaccept-
25 ance a later presentment for payment and any notice of
26 dishonor and protest for nonpayment are excused unless
27 in the meantime the instrument has been accepted.

28 (5) A waiver of protest is also a waiver of present-
29 ment and of notice of dishonor even though protest is not
30 required.

31 (6) Where a waiver of presentment or notice or pro-
32 test is embodied in the instrument itself it is binding upon
33 all parties; but where it is written above the signature of
34 an indorser it binds him only.

PART 6. DISCHARGE

Sec. 3-601. Discharge of Parties.—(1) The extent of the
2 discharge of any party from liability on an instrument is
3 governed by the sections on

4 (a) payment or satisfaction (Section 3-603); or

5 (b) tender of payment (Section 3-604); or

6 (c) cancellation or renunciation (Section 3-605); or

7 (d) impairment of right of recourse or of collateral
8 (Section 3-606); or

9 (e) reacquisition of the instrument by a prior party
10 (Section 3-208); or

- 11 (f) fraudulent and material alteration (Section 3-407);
12 or
13 (g) certification of a check (Section 3-411); or
14 (h) acceptance varying a draft (Section 3-412); or
15 (i) unexcused delay in presentment or notice of dis-
16 honor or protest (Section 3-502).
- 17 (2) Any party is also discharged from his liability on
18 an instrument to another party by any other act or agree-
19 ment with such party which would discharge his simple
20 contract for the payment of money.
- 21 (3) The liability of all parties is discharged when any
22 party who has himself no right of action or recourse on
23 the instrument
- 24 (a) reacquires the instrument in his own right; or
25 (b) is discharged under any provision of this article,
26 except as otherwise provided with respect to discharge
27 for impairment of recourse or of collateral (Section 3-
28 606).

Sec. 3-602. Effect of Discharge Against Holder in Due Course.—No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

Sec. 3-603. Payment or Satisfaction.—(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

13 (a) of a party who in bad faith pays or satisfies a
14 holder who acquired the instrument by theft or who
15 (unless having the rights of a holder in due course)
16 holds through one who so acquired it; or
17 (b) of a party (other than an intermediary bank or

18 a payor bank which is not a depository bank) who pays
19 or satisfies the holder of an instrument which has been
20 restrictively indorsed in a manner not consistent with
21 the terms of such restrictive indorsement.

22 (2) Payment or satisfaction may be made with the
23 consent of the holder by any person including a stranger
24 to the instrument. Surrender of the instrument to such
25 a person gives him the rights of a transferee (Section
26 3-201).

Sec. 3-604. Tender of Payment.—(1) Any party making
2 tender of full payment to a holder when or after it is
3 due is discharged to the extent of all subsequent liabil-
4 ity for interest, costs and attorney's fees.

5 (2) The holder's refusal of such tender wholly dis-
6 charges any party who has a right of recourse against
7 the party making the tender.

8 (3) Where the maker or acceptor of an instrument
9 payable otherwise than on demand is able and ready to
10 pay at every place of payment specified in the instru-
11 ment when it is due, it is equivalent to tender.

Sec. 3-605. Cancellation and Renunciation.—(1) The
2 holder of an instrument may even without considera-
3 tion discharge any party

4 (a) in any manner apparent on the face of the in-
5 strument or the indorsement, as by intentionally can-
6 celling the instrument or the party's signature by
7 destruction or mutilation, or by striking out the party's
8 signature; or

9 (b) by renouncing his rights by a writing signed
10 and delivered or by surrender of the instrument to the
11 party to be discharged.

12 (2) Neither cancellation nor renunciation without
13 surrender of the instrument affects the title thereto.

Sec. 3-606. Impairment of Recourse or of Collateral.—

2 (1) The holder discharges any party to the instru-
3 ment to the extent that without such party's consent
4 the holder

5 (a) without express reservation of rights releases
6 or agrees not to sue any person against whom the party
7 has to the knowledge of the holder a right of recourse

8 or agrees to suspend the right to enforce against such
9 person the instrument or collateral or otherwise dis-
10 charges such person, except that failure or delay in
11 effecting any required presentment, protest or notice
12 of dishonor with respect to any such person does not
13 discharge any party as to whom presentment, protest
14 or notice of dishonor is effective or unnecessary; or

15 (b) unjustifiably impairs any collateral for the in-
16 strument given by or on behalf of the party or any per-
17 son against whom he has a right of recourse.

18 (2) By express reservation of rights against a party
19 with a right of recourse the holder preserves

20 (a) all his rights against such party as of the time
21 when the instrument was originally due; and

22 (b) the right of the party to pay the instrument as
23 of that time; and

24 (c) all rights of such party to recourse against
25 others.

PART 7. ADVICE OF INTERNATIONAL SIGHT DRAFT

Sec. 3-701. Letter of Advice of International Sight

2 **Draft.**—(1) A “letter of advice” is a drawer’s communica-
3 tion to the drawee that a described draft has been
4 drawn.

5 (2) Unless otherwise agreed when a bank receives
6 from another bank a letter of advice of an international
7 sight draft the drawee bank may immediately debit the
8 drawer’s account and stop the running of interest pro
9 tanto. Such a debit and any resulting credit to any
10 account covering outstanding drafts leaves in the drawer
11 full power to stop payment or otherwise dispose of the
12 amount and creates no trust or interest in favor of the
13 holder.

14 (3) Unless otherwise agreed and except where a
15 draft is drawn under a credit issued by the drawee, the
16 drawee of an international sight draft owes the drawer
17 no duty to pay an unadvised draft but if it does so and
18 the draft is genuine, may appropriately debit the draw-
19 er’s account.

PART 8. MISCELLANEOUS

Sec. 3-801. Drafts in a Set.—(1) Where a draft is drawn
2 in a set of parts, each of which is numbered and ex-
3 pressed to be an order only if no other part has been
4 honored, the whole of the parts constitutes one draft
5 but a taker of any part may become a holder in due
6 course of the draft.

7 (2) Any person who negotiates, indorses or accepts a
8 single part of a draft drawn in a set thereby becomes liable
9 to any holder in due course of that part as if it were the
10 whole set, but as between different holders in due
11 course to whom different parts have been negotiated
12 the holder whose title first accrues has all rights to the
13 draft and its proceeds.

14 (3) As against the drawee the first presented part
15 of a draft drawn in a set is the part entitled to payment,
16 or if a time draft to acceptance and payment. Accept-
17 ance of any subsequently presented part renders the
18 drawee liable thereon under subsection (2). With re-
19 spect both to a holder and to the drawer payment of a
20 subsequently presented part of a draft payable at sight
21 has the same effect as payment of a check notwith-
22 standing an effective stop order (Section 4-407).

23 (4) Except as otherwise provided in this section, where
24 any part of a draft in a set is discharged by payment
25 or otherwise the whole draft is discharged.

Sec. 3-802. Effect of Instrument on Obligation for
2 **Which It Is Given.**—(1) Unless otherwise agreed where an
3 instrument is taken for an underlying obligation

4 (a) the obligation is pro tanto discharged if a bank is
5 drawer, maker or acceptor of the instrument and there is
6 no recourse on the instrument against the underlying ob-
7 ligor; and

8 (b) in any other case the obligation is suspended pro
9 tanto until the instrument is due or if it is payable on de-
10 mand until its presentment. If the instrument is dishon-
11 ored action may be maintained on either the instrument
12 or the obligation; discharge of the underlying obligor on
13 the instrument also discharges him on the obligation.

14 (2) The taking in good faith of a check which is not

15 postdated does not of itself so extend the time on the
16 original obligation as to discharge a surety.

Sec. 3-803. Notice to Third Party.—Where a defendant
2 is sued for breach of an obligation for which a third per-
3 son is answerable over under this article he may give the
4 third person written notice of the litigation, and the per-
5 son notified may then give similar notice to any other per-
6 son who is answerable over to him under this article. If
7 the notice states that the person notified may come in and
8 defend and that if the person notified does not do so he
9 will in any action against him by the person giving the
10 notice be bound by any determination of fact common to
11 the two litigations, then unless after seasonable receipt of
12 the notice the person notified does come in and defend he
13 is so bound.

Sec. 3-804. Lost, Destroyed or Stolen Instruments.—
2 The owner of an instrument which is lost, whether by de-
3 struction, theft or otherwise, may maintain an action in
4 his own name and recover from any party liable thereon
5 upon due proof of his ownership, the facts which prevent
6 his production of the instrument and its terms. The court
7 may require security indemnifying the defendant against
8 loss by reason of further claims on the instrument.

Sec. 3-805. Instruments Not Payable to Order or to
2 **Bearer.**—This article applies to any instrument whose
3 terms do not preclude transfer and which is otherwise
4 negotiable within this article but which is not payable to
5 order or to bearer, except that there can be no holder in
6 due course of such an instrument.

Article 4. Bank Deposits and Collections

PART 1. GENERAL PROVISIONS AND DEFINITIONS

Section 4-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Bank
3 Deposits and Collections.

Sec. 4-102. Applicability.—(1) To the extent that items
2 within this article are also within the scope of Articles 3
3 and 8, they are subject to the provisions of those articles.
4 In the event of conflict the provisions of this article gov-

5 ern those of Article 3 but the provisions of Article 8 gov-
6 ern those of this article.

7 (2) The liability of a bank for action or non-action
8 with respect to any item handled by it for purposes of pre-
9 sentment, payment or collection is governed by the law
10 of the place where the bank is located. In the case of ac-
11 tion or non-action by or at a branch or separate office of
12 a bank, its liability is governed by the law of the place
13 where the branch or separate office is located.

Sec. 4-103. Variation by Agreement; Measure of Dam-
2 ages; Certain Action Constituting Ordinary Care.—(1)

3 The effect of the provisions of this article may be
4 varied by agreement except that no agreement can dis-
5 claim a bank's responsibility for its own lack of good
6 faith or failure to exercise ordinary care or can limit the
7 measure of damages for such lack or failure; but the par-
8 ties may by agreement determine the standards by which
9 such responsibility is to be measured if such standards
10 are not manifestly unreasonable.

11 (2) Federal Reserve regulations and operating letters,
12 clearing house rules, and the like, have the effect of agree-
13 ments under subsection (1), whether or not specifically
14 assented to by all parties interested in items handled.

15 (3) Action or non-action approved by this article or
16 pursuant to Federal Reserve regulations or operating let-
17 ters constitutes the exercise of ordinary care and, in the
18 absence of special instructions, action or non-action con-
19 sistent with clearing house rules and the like or with a
20 general banking usage not disapproved by this article,
21 prima facie constitutes the exercise of ordinary care.

22 (4) The specification or approval of certain procedures
23 by this article does not constitute disapproval of other
24 procedures which may be reasonable under the circum-
25 stances.

26 (5) The measure of damages for failure to exercise
27 ordinary care in handling an item is the amount of the
28 item reduced by an amount which could not have been
29 realized by the use of ordinary care, and where there is
30 bad faith it includes other damages, if any, suffered by
31 the party as a proximate consequence.

Sec. 4-104. Definitions and Index of Definitions.—(1)

2 In this article unless the context otherwise requires

3 (a) "Account" means any account with a bank and
4 includes a checking, time, interest or savings account;

5 (b) "Afternoon" means the period of a day between
6 noon and midnight;

7 (c) "Banking day" means that part of any day on
8 which a bank is open to the public for carrying on sub-
9 stantially all of its banking functions;

10 (d) "Clearing house" means any association of banks
11 or other payors regularly clearing items;

12 (e) "Customer" means any person having an account
13 with a bank or for whom a bank has agreed to collect
14 items and includes a bank carrying an account with an-
15 other bank;

16 (f) "Documentary draft" means any negotiable or non-
17 negotiable draft with accompanying documents, securi-
18 ties or other papers to be delivered against honor of the
19 draft;

20 (g) "Item" means any instrument for the payment of
21 money even though it is not negotiable but does not in-
22 clude money;

23 (h) "Midnight deadline" with respect to a bank is
24 midnight on its next banking day following the banking
25 day on which it receives the relevant item or notice or
26 from which the time for taking action commences to run,
27 whichever is later;

28 (i) "Properly payable" includes the availability of
29 funds for payment at the time of decision to pay or dis-
30 honor;

31 (j) "Settle" means to pay in cash, by clearing house
32 settlement, in a charge or credit or by remittance, or other-
33 wise as instructed. A settlement may be either provi-
34 sional or final;

35 (k) "Suspends payments" with respect to a bank means
36 that it has been closed by order of the supervisory author-
37 ities, that a public officer has been appointed to take it
38 over or that it ceases or refuses to make payments in the
39 ordinary course of business.

40 (2) Other definitions applying to this article and the
41 sections in which they appear are:

42	“Collecting bank”	Section 4-105.
43	“Depository bank”	Section 4-105.
44	“Intermediary bank”	Section 4-105.
45	“Payor bank”	Section 4-105.
46	“Presenting bank”	Section 4-105.
47	“Remitting bank”	Section 4-105.
48	(3) The following definitions in other articles of this	
49	chapter apply to this article:	
50	“Acceptance”	Section 3-410.
51	“Certificate of deposit”	Section 3-104.
52	“Certification”	Section 3-411.
53	“Check”	Section 3-104.
54	“Draft”	Section 3-104.
55	“Holder in due course”	Section 3-302.
56	“Notice of dishonor”	Section 3-508.
57	“Presentment”	Section 3-504.
58	“Protest”	Section 3-509.
59	“Secondary party”	Section 3-102.
60	(4) In addition Article 1 of this chapter contains gen-	
61	eral definitions and principles of construction and inter-	
62	pretation applicable throughout this article.	

2 **Sec. 4-105. “Depository Bank”; “Intermediary Bank”;**
3 **“Collecting Bank”; “Payor Bank”; “Presenting Bank”;**
4 **“Remitting Bank”.**—In this article unless the context
5 otherwise requires:

6 (a) “Depository bank” means the first bank to which
7 an item is transferred for collection even though it is also
8 the payor bank;

9 (b) “Payor bank” means a bank by which an item is
10 payable as drawn or accepted;

11 (c) “Intermediary bank” means any bank to which an
12 item is transferred in course of collection except the de-
13 positary or payor bank;

14 (d) “Collecting bank” means any bank handling the
15 item for collection except the payor bank;

16 (e) “Presenting bank” means any bank presenting an
17 item except a payor bank;

18 (f) “Remitting bank” means any payor or intermedi-
ary bank remitting for an item.

Sec. 4-106. Separate Office of a Bank.—A branch or
2 separate office of a bank maintaining its own deposit
3 ledgers is a separate bank for the purpose of computing
4 the time within which and determining the place at or to
5 which action may be taken or notices or orders shall be
6 given under this article and under Article 3.

Sec. 4-107. Time of Receipt of Items.—(1) For the pur-
2 pose of allowing time to process items, prove balances
3 and make the necessary entries on its books to deter-
4 mine its position for the day, a bank may fix an after-
5 noon hour of two P.M. or later as a cut-off hour for the
6 handling of money and items and the making of entries
7 on its books.

8 (2) Any item or deposit of money received on any
9 day after a cut-off hour so fixed or after the close of
10 the banking day may be treated as being received at
11 the opening of the next banking day.

Sec. 4-108. Delays.—(1) Unless otherwise instructed,
2 a collecting bank in a good faith effort to secure pay-
3 ment may, in the case of specific items and with or with-
4 out the approval of any person involved, waive, modify or
5 extend time limits imposed or permitted by this chapter
6 for a period not in excess of an additional banking day
7 without discharge of secondary parties and without lia-
8 bility to its transferor or any prior party.

9 (2) Delay by a collecting bank or payor bank beyond
10 time limits prescribed or permitted by this chapter or by
11 instruction is excused if caused by interruption of com-
12 munication facilities, suspension of payments by an-
13 other bank, war, emergency conditions or other circum-
14 stances beyond the control of the bank provided it ex-
15 ercises such diligence as the circumstances require.

Sec. 4-109. Process of Posting.—The “process of post-
2 ing” means the usual procedure followed by a payor
3 bank in determining to pay an item and in recording
4 the payment including one or more of the following or
5 other steps as determined by the bank:

- 6 (a) verification of any signature;
- 7 (b) ascertaining that sufficient funds are available;
- 8 (c) affixing a “paid” or other stamp;

- 9 (d) entering a charge or entry to a customer's ac-
10 count;
11 (e) correcting or reversing an entry or erroneous
12 action with respect to the item.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

**Sec. 4-201. Presumption and Duration of Agency Status
of Collecting Banks and Provisional Status of Credits;
Applicability of Article; Item Indorsed "Pay Any Bank".**
—(1) Unless a contrary intent clearly appears and prior
to the time that a settlement given by a collecting bank
for an item is or becomes final (subsection (3) of Sec-
tion 4-211 and Sections 4-212 and 4-213) the bank is an
agent or sub-agent of the owner of the item and any
settlement given for the item is provisional. This pro-
vision applies regardless of the form of indorsement or
lack of indorsement and even though credit given for
the item is subject to immediate withdrawal as of right
or is in fact withdrawn; but the continuance of owner-
ship of an item by its owner and any rights of the own-
er to proceeds of the item are subject to rights of a col-
lecting bank such as those resulting from outstanding
advances on the item and valid rights of setoff. When
an item is handled by banks for purposes of present-
ment, payment and collection, the relevant provisions
of this article apply even though action of parties clearly
establishes that a particular bank has purchased the
item and is the owner of it.

(2) After an item has been indorsed with the words
"pay any bank" or the like, only a bank may acquire the
rights of a holder

(a) until the item has been returned to the cus-
tomer initiating collection; or

(b) until the item has been specially indorsed by a
bank to a person who is not a bank.

**Sec. 4-202. Responsibility for Collection; When Action
Seasonable.—**(1) A collecting bank must use ordinary
care in

(a) presenting an item or sending it for present-
ment; and

6 (b) sending notice of dishonor or nonpayment or
7 returning an item other than a documentary draft to
8 the bank's transferor or directly to the depository bank
9 under subsection (2) of Section 4-212 after learning that
10 the item has not been paid or accepted, as the case may
11 be; and

12 (c) settling for an item when the bank receives
13 final settlement; and

14 (d) making or providing for any necessary protest;
15 and

16 (e) notifying its transferor of any loss or delay in
17 transit within a reasonable time after discovery thereof.

18 (2) A collecting bank taking proper action before
19 its midnight deadline following receipt of an item, no-
20 tice or payment acts seasonably; taking proper action
21 within a reasonably longer time may be seasonable but
22 the bank has the burden of so establishing.

23 (3) Subject to subsection (1) (a), a bank is not liable
24 for the insolvency, neglect, misconduct, mistake or de-
25 fault of another bank or person or for loss or destruc-
26 tion of an item in transit or in the possession of others.

Sec. 4-203. Effect of Instructions.—Subject to the pro-
2 visions of Article 3 concerning conversion of instru-
3 ments (Section 3-419) and the provisions of both Article
4 3 and this article concerning restrictive indorsements
5 only a collecting bank's transferor can give instructions
6 which affect the bank or constitute notice to it and a
7 collecting bank is not liable to prior parties for any ac-
8 tion taken pursuant to such instructions or in accordance
9 with any agreement with its transferor.

**Sec. 4-204. Methods of Sending and Presenting; Send-
2 ing Direct to Payor Bank.**—(1) A collecting bank must
3 send items by reasonably prompt method taking into
4 consideration any relevant instructions, the nature of
5 the item, the number of such items on hand, and the
6 cost of collection involved and the method generally
7 used by it or others to present such items.

8 (2) A collecting bank may send

9 (a) any item direct to the payor bank;

10 (b) any item to any non-bank payor if authorized
11 by its transferor; and

12 (c) any item other than documentary drafts to any
13 non-bank payor, if authorized by Federal Reserve regu-
14 lation or operating letter, clearing house rule or the like.

15 (3) Presentment may be made by a presenting bank
16 at a place where the payor bank has requested that pre-
17 sentment be made.

**Sec. 4-205. Supplying Missing Indorsement; No Notice
2 from Prior Indorsement.**—(1) A depository bank which
3 has taken an item for collection may supply any indorse-
4 ment of the customer which is necessary to title unless
5 the item contains the words “payee’s indorsement re-
6 quired” or the like. In the absence of such a requirement
7 a statement placed on the item by the depository bank to
8 the effect that the item was deposited by a customer or
9 credited to his account is effective as the customer’s in-
10 dorsement.

11 (2) An intermediary bank, or payor bank which is not
12 a depository bank, is neither given notice nor otherwise
13 affected by a restrictive indorsement of any person except
14 the bank’s immediate transferor.

Sec. 4-206. Transfer Between Banks.—Any agreed
2 method which identifies the transferor bank is sufficient
3 for the item’s further transfer to another bank.

**Sec. 4-207. Warranties of Customer and Collecting
2 Bank on Transfer or Presentment of Items; Time for
3 Claims.**—(1) Each customer or collecting bank who ob-
4 tains payment or acceptance of an item and each prior cus-
5 tomer and collecting bank warrants to the payor bank or
6 other payor who in good faith pays or accepts the item
7 that

8 (a) he has a good title to the item or is authorized to
9 obtain payment or acceptance on behalf of one who has
10 a good title; and

11 (b) he has no knowledge that the signature of
12 the maker or drawer is unauthorized, except that this
13 warranty is not given by any customer or collecting bank
14 that is a holder in due course and acts in good faith

- 15 (i) to a maker with respect to the maker's own signa-
16 ture; or
- 17 (ii) to a drawer with respect to the drawer's own sig-
18 nature, whether or not the drawer is also the drawee; or
- 19 (iii) to an acceptor of an item if the holder in due
20 course took the item after the acceptance or obtained the
21 acceptance without knowledge that the drawer's signature
22 was unauthorized; and
- 23 (c) the item has not been materially altered, except
24 that this warranty is not given by any customer or col-
25 lecting bank that is a holder in due course and acts in
26 good faith
- 27 (i) to the maker of a note; or
- 28 (ii) to the drawer of a draft whether or not the drawer
29 is also the drawee; or
- 30 (iii) to the acceptor of an item with respect to an al-
31 teration made prior to the acceptance if the holder in due
32 course took the item after the acceptance, even though
33 the acceptance provided "payable as originally drawn" or
34 equivalent terms; or
- 35 (iv) to the acceptor of an item with respect to an al-
36 teration made after the acceptance.
- 37 (2) Each customer and collecting bank who transfers
38 an item and receives a settlement or other consideration
39 for it warrants to his transferee and to any subsequent
40 collecting bank who takes the item in good faith that
- 41 (a) he has a good title to the item or is authorized to
42 obtain payment or acceptance on behalf of one who has
43 a good title and the transfer is otherwise rightful; and
- 44 (b) all signatures are genuine or authorized; and
- 45 (c) the item has not been materially altered; and
- 46 (d) no defense of any party is good against him; and
- 47 (e) he has no knowledge of any insolvency proceeding
48 instituted with respect to the maker or acceptor or the
49 drawer of an unaccepted item.
- 50 In addition each customer and collecting bank so trans-
51 ferring an item and receiving a settlement or other con-
52 sideration engages that upon dishonor and any necessary
53 notice of dishonor and protest he will take up the item.
- 54 (3) The warranties and the engagement to honor set
55 forth in the two preceding subsections arise notwithstand-

56 ing the absence of indorsement or words of guaranty or
57 warranty in the transfer or presentment and a collecting
58 bank remains liable for their breach despite remittance
59 to its transferor. Damages for breach of such warranties
60 or engagement to honor shall not exceed the consideration
61 received by the customer or collecting bank responsible
62 plus finance charges and expenses related to the item, if
63 any.

64 (4) Unless a claim for breach of warranty under this
65 section is made within a reasonable time after the person
66 claiming learns of the breach, the person liable is dis-
67 charged to the extent of any loss caused by the delay in
68 making claim.

**Sec. 4-208. Security Interest of Collecting Bank in
2 Items, Accompanying Documents and Proceeds.—(1) A
3 bank has a security interest in an item and any accom-
4 panying documents or the proceeds of either**

5 (a) in case of an item deposited in an account to the
6 extent to which credit given for the item has been with-
7 drawn or applied;

8 (b) in case of an item for which it has given credit
9 available for withdrawal as of right, to the extent of the
10 credit given whether or not the credit is drawn upon and
11 whether or not there is a right of charge-back; or

12 (c) if it makes an advance on or against the item.

13 (2) When credit which has been given for several
14 items received at one time or pursuant to a single agree-
15 ment is withdrawn or applied in part the security interest
16 remains upon all the items, any accompanying documents
17 or the proceeds of either. For the purpose of this section,
18 credits first given are first withdrawn.

19 (3) Receipt by a collecting bank of a final settlement
20 for an item is a realization on its security interest in the
21 item, accompanying documents and proceeds. To the ex-
22 tent and so long as the bank does not receive final settle-
23 ment for the item or give up possession of the item or ac-
24 companying documents for purposes other than collec-
25 tion, the security interest continues and is subject to the
26 provisions of Article 9 except that

27 (a) no security agreement is necessary to make the

28 security interest enforceable (subsection (1) (b) of Sec-
29 tion 9-203); and

30 (b) no filing is required to perfect the security inter-
31 est; and

32 (c) the security interest has priority over conflicting
33 perfected security interests in the item, accompanying
34 documents or proceeds.

Sec. 4-209. When Bank Gives Value for Purposes of
2 **Holder in Due Course.**—For purposes of determining its
3 status as a holder in due course, the bank has given value
4 to the extent that it has a security interest in an item
5 provided that the bank otherwise complies with the re-
6 quirements of Section 3-302 on what constitutes a holder
7 in due course.

Sec. 4-210. Presentment by Notice of Item Not Pay-
2 **able by, Through or at a Bank; Liability of Secondary**
3 **Parties.**—(1) Unless otherwise instructed, a collecting
4 bank may present an item not payable by, through or
5 at a bank by sending to the party to accept or pay a
6 written notice that the bank holds the item for accept-
7 ance or payment. The notice must be sent in time to
8 be received on or before the day when presentment is
9 due and the bank must meet any requirement of the
10 party to accept or pay under Section 3-505 by the close
11 of the bank's next banking day after it knows of the
12 requirement.

13 (2) Where presentment is made by notice and neither
14 honor nor request for compliance with a requirement
15 under Section 3-505 is received by the close of business
16 on the day after maturity or in the case of demand items
17 by the close of business on the third banking day after
18 notice was sent, the presenting bank may treat the item
19 as dishonored and charge any secondary party by send-
20 ing him notice of the facts.

Sec. 4-211. Media of Remittance; Provisional and Final
2 **Settlement in Remittance Cases.**—(1) A collecting bank
3 may take in settlement of an item
4 (a) a check of the remitting bank or of another bank
5 on any bank except the remitting bank; or

6 (b) a cashier's check or similar primary obligation
7 of a remitting bank which is a member of or clears
8 through a member of the same clearing house or group
9 as the collecting bank; or

10 (c) appropriate authority to charge an account of
11 the remitting bank or of another bank with the collect-
12 ing bank; or

13 (d) if the item is drawn upon or payable by a per-
14 son other than a bank, a cashier's check, certified check
15 or other bank check or obligation.

16 (2) If before its midnight deadline the collecting
17 bank properly dishonors a remittance check or authori-
18 zation to charge on itself or presents or forwards for col-
19 lection a remittance instrument of or on another bank
20 which is of a kind approved by subsection (1) or has
21 not been authorized by it, the collecting bank is not
22 liable to prior parties in the event of the dishonor of
23 such check, instrument or authorization.

24 (3) A settlement for an item by means of a re-
25 mittance instrument or authorization to charge is or
26 becomes a final settlement as to both the person making
27 and the person receiving the settlement

28 (a) if the remittance instrument or authorization to
29 charge is of a kind approved by subsection (1) or has
30 not been authorized by the person receiving the settle-
31 ment and in either case the person receiving the settle-
32 ment acts seasonably before its midnight deadline in
33 presenting, forwarding for collection or paying the in-
34 strument or authorization,—at the time the remittance
35 instrument or authorization is finally paid by the payor
36 by which it is payable;

37 (b) if the person receiving the settlement has auth-
38 orized remittance by a non-bank check or obligation or
39 by a cashier's check or similar primary obligation of or
40 a check upon the payor or other remitting bank which
41 is not of a kind approved by subsection (1) (b),—at the
42 time of the receipt of such remittance check or obliga-
43 tion; or

44 (c) if in a case not covered by subparagraphs (a)
45 or (b) the person receiving the settlement fails to season-
46 ably present, forward for collection, pay or return a re-

47 mittance instrument or authorization to it to charge be-
48 fore its midnight deadline,—at such midnight deadline.

Sec. 4-212. Right of Charge-Back or Refund.—(1) If a
2 collecting bank has made provisional settlement with its
3 customer for an item and itself fails by reason of dishonor,
4 suspension of payments by a bank or otherwise to receive
5 a settlement for the item which is or becomes final, the
6 bank may revoke the settlement given by it, charge back
7 the amount of any credit given for the item to its cus-
8 tomer's account or obtain refund from its customer
9 whether or not it is able to return the items if by its mid-
10 night deadline or within a longer reasonable time after
11 it learns the facts it returns the item or sends notification
12 of the facts. These rights to revoke, charge-back and ob-
13 tain refund terminate if and when a settlement for the
14 item received by the bank is or becomes final (subsection
15 (3) of Section 4-211 and subsections (2) and (3) of Sec-
16 tion 4-213).

17 (2) Within the time and manner prescribed by this
18 section and Section 4-301, an intermediary or payor bank,
19 as the case may be, may return an unpaid item directly
20 to the depositary bank and may send for collection a draft
21 on the depositary bank and obtain reimbursement. In
22 such case, if the depositary bank has received provisional
23 settlement for the item, it must reimburse the bank draw-
24 ing the draft and any provisional credits for the item be-
25 tween banks shall become and remain final.

26 (3) A depositary bank which is also the payor may
27 charge-back the amount of an item to its customer's ac-
28 count or obtain refund in accordance with the section
29 governing return of an item received by a payor bank for
30 credit on its books (Section 4-301).

31 (4) The right to charge-back is not affected by
32 (a) prior use of the credit given for the item; or
33 (b) failure by any bank to exercise ordinary care with
34 respect to the item but any bank so failing remains liable.

35 (5) A failure to charge-back or claim refund does not
36 affect other rights of the bank against the customer or any
37 other party.

38 (6) If credit is given in dollars as the equivalent of the
39 value of an item payable in a foreign currency the dollar

40 amount of any charge-back or refund shall be calculated
41 on the basis of the buying sight rate for the foreign cur-
42 rency prevailing on the day when the person entitled to
43 the charge-back or refund learns that it will not receive
44 payment in ordinary course.

Sec. 4-213. Final Payment of Item by Payor Bank;

2 **When Provisional Debits and Credits Become Final;**

3 **When Certain Credits Become Available for Withdrawal.**

4 —(1) An item is finally paid by a payor bank when the
5 bank has done any of the following, whichever happens
6 first:

7 (a) paid the item in cash; or

8 (b) settled for the item without reserving a right to
9 revoke the settlement and without having such right un-
10 der statute, clearing house rule or agreement; or

11 (c) completed the process of posting the item to the
12 indicated account of the drawer, maker or other person
13 to be charged therewith; or

14 (d) made a provisional settlement for the item and
15 failed to revoke the settlement in the time and manner
16 permitted by statute, clearing house rule or agreement.

17 Upon a final payment under subparagraphs (b), (c) or
18 (d) the payor bank shall be accountable for the amount
19 of the item.

20 (2) If provisional settlement for an item between the
21 presenting and payor banks is made through a clearing
22 house or by debits or credits in an account between them,
23 then to the extent that provisional debits or credits for
24 the item are entered in accounts between the presenting
25 and payor banks or between the presenting and succes-
26 sive prior collecting banks seriatim, they become final
27 upon final payment of the item by the payor bank.

28 (3) If a collecting bank receives a settlement for an
29 item which is or becomes final (subsection (3) of Section
30 4-211, subsection (2) of Section 4-213) the bank is account-
31 able to its customer for the amount of the item and any
32 provisional credit given for the item in an account with
33 its customer becomes final.

34 (4) Subject to any right of the bank to apply the credit
35 to an obligation of the customer, credit given by a bank

36 for an item in an account with its customer becomes
37 available for withdrawal as of right

38 (a) in any case where the bank has received a provi-
39 sional settlement for the item,—when such settlement be-
40 comes final and the bank has had a reasonable time to
41 learn that the settlement is final;

42 (b) in any case where the bank is both a depository
43 bank and a payor bank and the item is finally paid,—at
44 the opening of the bank's second banking day following
45 receipt of the item.

46 (5) A deposit of money in a bank is final when made
47 but, subject to any right of the bank to apply the deposit
48 to an obligation of the customer, the deposit becomes
49 available for withdrawal as of right at the opening of the
50 bank's next banking day following receipt of the deposit.

Sec. 4-214. Insolvency and Preference.—(1) Any item
2 in or coming into the possession of a payor or collecting
3 bank which suspends payment and which item is not fi-
4 nally paid shall be returned by the receiver, trustee or
5 agent in charge of the closed bank to the presenting bank
6 or the closed bank's customer.

7 (2) If a payor bank finally pays an item and suspends
8 payments without making a settlement for the item with
9 its customer or the presenting bank which settlement is
10 or becomes final, the owner of the item has a preferred
11 claim against the payor bank.

12 (3) If a payor bank gives or a collecting bank gives or
13 receives a provisional settlement for an item and there-
14 after suspends payments, the suspension does not prevent
15 or interfere with the settlement becoming final if such
16 finality occurs automatically upon the lapse of certain
17 time or the happening of certain events (subsection (3)
18 of Section 4-211, subsections (1) (d), (2) and (3) of Sec-
19 tion 4-213).

20 (4) If a collecting bank receives from subsequent par-
21 ties settlement for an item which settlement is or becomes
22 final and suspends payments without making a settlement
23 for the item with its customer which is or becomes final,
24 the owner of the item has a preferred claim against such
25 collecting bank.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

- Sec. 4-301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor.**—(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of Section 4-213) and before its midnight deadline it
- 10 (a) returns the item; or
 - 11 (b) sends written notice of dishonor or nonpayment
- 12 if the item is held for protest or is otherwise unavailable
13 for return.
- 14 (2) If a demand item is received by a payor bank for
15 credit on its books it may return such item or send notice
16 of dishonor and may revoke any credit given or recover
17 the amount thereof withdrawn by its customer, if it acts
18 within the time limit and in the manner specified in the
19 preceding subsection.
- 20 (3) Unless previous notice of dishonor has been sent
21 an item is dishonored at the time when for purposes of
22 dishonor it is returned or notice sent in accordance with
23 this section.
- 24 (4) An item is returned:
- 25 (a) as to an item received through a clearing house,
26 when it is delivered to the presenting or last collecting
27 bank or to the clearing house or is sent or delivered in ac-
28 cordance with its rules; or
 - 29 (b) in all other cases, when it is sent or delivered to
30 the bank's customer or transferor or pursuant to his in-
31 structions.

- Sec. 4-302. Payor Bank's Responsibility for Late Return of Item.**—In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of Section 4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of
- 7 (a) a demand item other than a documentary draft
8 whether properly payable or not if the bank, in any

9 case where it is not also the depositary bank, retains
10 the item beyond midnight of the banking day of receipt
11 without settling for it or, regardless of whether it is also
12 the depositary bank, does not pay or return the item
13 or send notice of dishonor until after its midnight dead-
14 line; or

15 (b) any other properly payable item unless within
16 the time allowed for acceptance or payment of that item
17 the bank either accepts or pays the item or returns it
18 and accompanying documents.

**Sec. 4-303. When Items Subject to Notice, Stop-Order,
2 Legal Process or Setoff; Order in Which Items May Be
3 Charged or Certified.—**(1) Any knowledge, notice or stop-
4 order received by, legal process served upon or setoff
5 exercised by a payor bank, whether or not effective under
6 other rules of law to terminate, suspend or modify the
7 bank's right or duty to pay an item or to charge its cus-
8 tomer's account for the item, comes too late to so ter-
9 minate, suspend or modify such right or duty if the
10 knowledge, notice, stop-order or legal process is received
11 or served and a reasonable time for the bank to act
12 thereon expires or the setoff is exercised after the bank
13 has done any of the following:

14 (a) accepted or certified the item;

15 (b) paid the item in cash;

16 (c) settled for the item without reserving a right to
17 revoke the settlement and without having such right
18 under statute, clearing house rule or agreement;

19 (d) completed the process of posting the item to the
20 indicated account of the drawer, maker or other person
21 to be charged therewith or otherwise has evidenced by
22 examination of such indicated account and by action
23 its decision to pay the item; or

24 (e) become accountable for the amount of the item
25 under subsection (1) (d) of Section 4-213 and Section
26 4-302 dealing with the payor bank's responsibility for
27 late return of items.

28 (2) Subject to the provisions of subsection (1) items
29 may be accepted, paid, certified or charged to the in-
30 dicated account of its customer in any order convenient
31 to the bank.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK
AND ITS CUSTOMER

Sec. 4-401. When Bank May Charge Customer's Account.—(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

(a) the original tenor of his altered item; or

(b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Sec. 4-402. Bank's Liability to Customer for Wrongful Dishonor.—A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

Sec. 4-403. Customer's Right to Stop Payment; Burden of Proof of Loss.—(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

Sec. 4-404. Bank Not Obligated to Pay Check More Than Six Months Old.—A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Sec. 4-405. Death or Incompetence of Customer.—(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

Sec. 4-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration.—(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on

18 the item if the bank also establishes that it suffered a
19 loss by reason of such failure; and

20 (b) an unauthorized signature or alteration by the
21 same wrongdoer on any other item paid in good faith by
22 the bank after the first item and statement was avail-
23 able to the customer for a reasonable period not exceed-
24 ing fourteen calendar days and before the bank receives
25 notification from the customer of any such unauthorized
26 signature or alteration.

27 (3) The preclusion under subsection (2) does not
28 apply if the customer establishes lack of ordinary care
29 on the part of the bank in paying the item(s).

30 (4) Without regard to care or lack of care of either
31 the customer or the bank a customer who does not with-
32 in one year from the time the statement and items are
33 made available to the customer (subsection (1)) dis-
34 cover and report his unauthorized signature or any alter-
35 ation on the face or back of the item or does not within
36 three years from that time discover and report any un-
37 authorized indorsement is precluded from asserting
38 against the bank such unauthorized signature or indorse-
39 ment or such alteration.

40 (5) If under this section a payor bank has a valid
41 defense against a claim of a customer upon or resulting
42 from payment of an item and waives or fails upon re-
43 quest to assert the defense the bank may not assert
44 against any collecting bank or other prior party pre-
45 senting or transferring the item a claim based upon the
46 unauthorized signature or alteration giving rise to the
47 customer's claim.

Sec. 4-407. Payor Bank's Right to Subrogation on Im-
2 **proper Payment.**—If a payor bank has paid an item over
3 the stop payment order of the drawer or maker or other-
4 wise under circumstances giving a basis for objection
5 by the drawer or maker, to prevent unjust enrichment
6 and only to the extent necessary to prevent loss to the
7 bank by reason of its payment of the item, the payor
8 bank shall be subrogated to the rights

9 (a) of any holder in due course on the item against
10 the drawer or maker; and

- 11 (b) of the payee or any other holder of the item
12 against the drawer or maker either on the item or under
13 the transaction out of which the item arose; and
14 (c) of the drawer or maker against the payee or any
15 other holder of the item with respect to the transaction
16 out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

**Sec. 4-501. Handling of Documentary Drafts; Duty to
2 Send for Presentment and to Notify Customer of Dis-
3 honor.—**A bank which takes a documentary draft for col-
4 lection must present or send the draft and accompanying
5 documents for presentment and upon learning that the
6 draft has not been paid or accepted in due course must
7 seasonably notify its customer of such fact even though
8 it may have discounted or bought the draft or extended
9 credit available for withdrawal as of right.

Sec. 4-502. Presentment of "On Arrival" Drafts.—When
2 a draft or the relevant instructions require presentment
3 "on arrival", "when goods arrive" or the like, the collect-
4 ing bank need not present until in its judgment a reason-
5 able time for arrival of the goods has expired. Refusal
6 to pay or accept because the goods have not arrived is not
7 dishonor; the bank must notify its transferor of such re-
8 fusals but need not present the draft again until it is in-
9 structed to do so or learns of the arrival of the goods.

**Sec. 4-503. Responsibility of Presenting Bank for Doc-
2 uments and Goods; Report of Reasons for Dishonor; Ref-
3 eree in Case of Need.—**Unless otherwise instructed and
4 except as provided in Article 5 a bank presenting a docu-
5 mentary draft
6 (a) must deliver the documents to the drawee on ac-
7 ceptance of the draft if it is payable more than three days
8 after presentment; otherwise, only on payment; and
9 (b) upon dishonor, either in the case of presentment
10 for acceptance or presentment for payment, may seek and
11 follow instructions from any referee in case of need des-
12 ignated in the draft or if the presenting bank does not
13 choose to utilize his services it must use diligence and
14 good faith to ascertain the reason for dishonor, must no-

15 tify its transferor of the dishonor and of the results of its
16 effort to ascertain the reasons therefor and must request
17 instructions.

18 But the presenting bank is under no obligation with re-
19 spect to goods represented by the documents except to fol-
20 low any reasonable instructions seasonably received; it
21 has a right to reimbursement for any expense incurred in
22 following instructions and to prepayment of or idemnity
23 for such expenses.

**Sec. 4-504. Privilege of Presenting Bank to Deal With
2 Goods; Security Interest for Expenses.**—(1) A presenting
3 bank which, following the dishonor of a documentary
4 draft, has seasonably requested instructions but does not
5 receive them within a reasonable time may store, sell, or
6 otherwise deal with the goods in any reasonable manner.
7 (2) For its reasonable expenses incurred by action un-
8 der subsection (1) the presenting bank has a lien upon
9 the goods or their proceeds, which may be foreclosed in
10 the same manner as an unpaid seller's lien.

Article 5. Letters of Credit

Section 5-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Letters
3 of Credit.

Sec. 5-102. Scope.—(1) This article applies
2 (a) to a credit issued by a bank if the credit requires
3 a documentary draft or a documentary demand for pay-
4 ment; and
5 (b) to a credit issued by a person other than a bank
6 if the credit requires that the draft or demand for pay-
7 ment be accompanied by a document of title; and
8 (c) to a credit issued by a bank or other person if the
9 credit is not within subparagraphs (a) or (b) but con-
10 spicuously states that it is a letter of credit or is conspicu-
11 ously so entitled.
12 (2) Unless the engagement meets the requirements of
13 subsection (1), this article does not apply to engagements
14 to make advances or to honor drafts or demands for pay-
15 ment to authorities to pay or purchase, to guarantees or
16 to general agreements.

17 (3) This article deals with some but not all of the rules
18 and concepts of letters of credit as such rules or concepts
19 have developed prior to the effective date of this chapter
20 or may hereafter develop. The fact that this article states
21 a rule does not by itself require, imply or negate appli-
22 cation of the same or a converse rule to a situation not
23 provided for or to a person not specified by this article.

Sec. 5-103. **Definitions.**—(1) In this article unless the
2 context otherwise requires

3 (a) “Credit” or “letter of credit” means an engage-
4 ment by a bank or other person made at the request of a
5 customer and of a kind within the scope of this article
6 (Section 5-102) that the issuer will honor drafts or other
7 demands for payment upon compliance with the condi-
8 tions specified in the credit. A credit may be either re-
9 vocable or irrevocable. The engagement may be either
10 an agreement to honor or a statement that the bank or
11 other person is authorized to honor.

12 (b) A “documentary draft” or a “documentary de-
13 mand for payment” is one honor of which is conditioned
14 upon the presentation of a document or documents.
15 “Document” means any paper including document of
16 title, security, invoice, certificate, notice of default and the
17 like.

18 (c) An “issuer” is a bank or other person issuing a
19 credit.

20 (d) A “beneficiary” of a credit is a person who is en-
21 titled under its terms to draw or demand payment.

22 (e) An “advising bank” is a bank which gives notifi-
23 cation of the issuance of a credit by another bank.

24 (f) A “confirming bank” is a bank which engages
25 either that it will itself honor a credit already issued by
26 another bank or that such a credit will be honored by the
27 issuer or a third bank.

28 (g) A “customer” is a buyer or other person who
29 causes an issuer to issue a credit. The term also includes
30 a bank which procures issuance or confirmation on behalf
31 of that bank’s customer.

32 (2) Other definitions applying to this article and the
33 sections in which they appear are:

- 34 "Notation of Credit". Section 5-108.
 35 "Presenter". Section 5-112 (3).
 36 (3) Definitions in other articles of this chapter apply-
 37 ing to this article and the sections in which they appear
 38 are:
 39 "Accept" or "Acceptance". Section 3-410.
 40 "Contract for sale". Section 2-106.
 41 "Draft". Section 3-104.
 42 "Holder in due course". Section 3-302.
 43 "Midnight deadline". Section 4-104.
 44 "Security". Section 8-102.
 45 (4) In addition, Article 1 of this chapter contains gen-
 46 eral definitions and principles of construction and inter-
 47 pretation applicable throughout this article.

Sec. 5-104. Formal Requirements; Signing.—(1) Except
 2 as otherwise required in subsection (1) (c) of Section
 3 5-102 on scope, no particular form of phrasing is required
 4 for a credit. A credit must be in writing and signed by
 5 the issuer and a confirmation must be in writing and
 6 signed by the confirming bank. A modification of the
 7 terms of a credit or confirmation must be signed by the
 8 issuer or confirming bank.

9 (2) A telegram may be a sufficient signed writing if
 10 it identifies its sender by an authorized authentication.
 11 The authentication may be in code and the authorized
 12 naming of the issuer in an advice of credit is a sufficient
 13 signing.

Sec. 5-105. Consideration.—No consideration is neces-
 2 sary to establish a credit or to enlarge or otherwise mod-
 3 ify its terms.

Sec. 5-106. Time and Effect of Establishment of Credit.
 2 —(1) Unless otherwise agreed a credit is established
 3 (a) as regards the customer as soon as a letter of
 4 credit is sent to him or the letter of credit or an author-
 5 ized written advice of its issuance is sent to the bene-
 6 ficiary; and
 7 (b) as regards the beneficiary when he receives a
 8 letter of credit or an authorized written advice of its
 9 issuance.

10 (2) Unless otherwise agreed once an irrevocable
11 credit is established as regards the customer it can be
12 modified or revoked only with the consent of the cus-
13 tomer and once it is established as regards the bene-
14 ficiary it can be modified or revoked only with his con-
15 sent.

16 (3) Unless otherwise agreed after a revocable credit
17 is established it may be modified or revoked by the issuer
18 without notice to or consent from the customer or bene-
19 ficiary.

20 (4) Notwithstanding any modification or revocation
21 of a revocable credit any person authorized to honor or
22 negotiate under the terms of the original credit is en-
23 titled to reimbursement for or honor of any draft or de-
24 mand for payment duly honored or negotiated before
25 receipt of notice of the modification or revocation and
26 the issuer in turn is entitled to reimbursement from its
27 customer.

**Sec. 5-107. Advice of Credit; Confirmation; Error in
2 Statement of Terms.—**(1) Unless otherwise specified an
3 advising bank by advising a credit issued by another
4 bank does not assume any obligation to honor drafts
5 drawn or demands for payment made under the credit
6 but it does assume obligation for the accuracy of its own
7 statement.

8 (2) A confirming bank by confirming a credit be-
9 comes directly obligated on the credit to the extent of
10 its confirmation as though it were its issuer and acquires
11 the rights of an issuer.

12 (3) Even though an advising bank incorrectly ad-
13 vises the terms of a credit it has been authorized to advise
14 the credit is established as against the issuer to the ex-
15 tent of its original terms.

16 (4) Unless otherwise specified the customer bears as
17 against the issuer all risks of transmission and reason-
18 able translation or interpretation of any message relat-
19 ing to a credit.

Sec. 5-108. "Notation Credit"; Exhaustion of Credit.—

2 (1) A credit which specifies that any person purchasing
3 or paying drafts drawn or demands for payment made

4 under it must note the amount of the draft or demand
5 on the letter or advice of credit is a "notation credit".

6 (2) Under a notation credit

7 (a) a person paying the beneficiary or purchasing
8 a draft or demand for payment from him acquires a right
9 to honor only if the appropriate notation is made and
10 by transferring or forwarding for honor the documents
11 under the credit such a person warrants to the issuer
12 that the notation has been made; and

13 (b) unless the credit or a signed statement that an
14 appropriate notation has been made accompanies the
15 draft or demand for payment the issuer may delay honor
16 until evidence of notation has been procured which is
17 satisfactory to it but its obligation and that of its cus-
18 tomer continue for a reasonable time not exceeding
19 thirty days to obtain such evidence.

20 (3) If the credit is not a notation credit

21 (a) the issuer may honor complying drafts or de-
22 mands for payment presented to it in the order in which
23 they are presented and is discharged pro tanto by honor
24 of any such draft or demand;

25 (b) as between competing good faith purchasers of
26 complying drafts or demands the person first purchasing
27 has priority over a subsequent purchaser even though
28 the later purchased draft or demand has been first hon-
29 ored.

Sec. 5-109. Issuer's Obligation to Its Customer.—(1) An
2 issuer's obligation to its customer includes good faith
3 and observance of any general banking usage but unless
4 otherwise agreed does not include liability or respon-
5 sibility

6 (a) for performance of the underlying contract for
7 sale or other transaction between the customer and the
8 beneficiary; or

9 (b) for any act or omission of any person other than
10 itself or its own branch or for loss or destruction of a
11 draft, demand or document in transit or in the posses-
12 sion of others; or

13 (c) based on knowledge or lack of knowledge of any
14 usage of any particular trade.

15 (2) An issuer must examine documents with care

16 so as to ascertain that on their face they appear to com-
17 ply with the terms of the credit but unless otherwise
18 agreed assumes no liability or responsibility for the
19 genuineness, falsification or effect of any document which
20 appears on such examination to be regular on its face.

21 (3) A non-bank issuer is not bound by any banking
22 usage of which it has no knowledge.

**Sec. 5-110. Availability of Credit in Portions; Pre-
2 sender's Reservation of Lien or Claim.—**(1) Unless other-
3 wise specified a credit may be used in portions in the
4 discretion of the beneficiary.

5 (2) Unless otherwise specified a person by present-
6 ing a documentary draft or demand for payment under
7 a credit relinquishes upon its honor all claims to the
8 documents and a person by transferring such draft or
9 demand or causing such presentment authorizes such
10 relinquishment. An explicit reservation of claim makes
11 the draft or demand non-complying.

Sec. 5-111. Warranties on Transfer and Presentment.—

2 (1) Unless otherwise agreed the beneficiary by trans-
3 ferring or presenting a documentary draft or demand
4 for payment warrants to all interested parties that the
5 necessary conditions of the credit have been complied
6 with. This is in addition to any warranties arising under
7 Articles 3, 4, 7 and 8.

8 (2) Unless otherwise agreed a negotiating, advising,
9 confirming, collecting or issuing bank presenting or
10 transferring a draft or demand for payment under a
11 credit warrants only the matters warranted by a col-
12 lecting bank under Article 4 and any such bank trans-
13 ferring a document warrants only the matters warrant-
14 ed by an intermediary under Articles 7 and 8.

**Sec. 5-112. Time Allowed for Honor or Rejection; With-
2 holding Honor or Rejection by Consent; "Presenter".—**(1)
3 A bank to which a documentary draft or demand for
4 payment is presented under a credit may without dis-
5 honor of the draft, demand or credit

6 (a) defer honor until the close of the third banking
7 day following receipt of the documents; and

8 (b) further defer honor if the presenter has express-
9 ly or impliedly consented thereto.

10 Failure to honor within the time here specified consti-
11 tutes dishonor of the draft or demand and of the credit
12 except as otherwise provided in subsection (4) of Sec-
13 tion 5-114 on conditional payment.

14 (2) Upon dishonor the bank may unless otherwise
15 instructed fulfill its duty to return the draft or demand
16 and the documents by holding them at the disposal of
17 the presenter and sending him an advice to that effect.

18 (3) "Presenter" means any person presenting a draft
19 or demand for payment for honor under a credit even
20 though that person is a confirming bank or other cor-
21 respondent which is acting under an issuer's authori-
22 zation.

Sec. 5-113. Indemnities.—(1) A bank seeking to obtain
2 (whether for itself or another) honor, negotiation or
3 reimbursement under a credit may give an indemnity
4 to induce such honor, negotiation or reimbursement.

5 (2) An indemnity agreement inducing honor, nego-
6 tiation or reimbursement

7 (a) unless otherwise explicitly agreed applies to
8 defects in the documents but not in the goods; and

9 (b) unless a longer time is explicitly agreed expires
10 at the end of ten business days following receipt of the
11 documents by the ultimate customer unless notice of
12 objection is sent before such expiration date. The ulti-
13 mate customer may send notice of objection to the per-
14 son from whom he received the documents and any bank
15 receiving such notice is under a duty to send notice to
16 its transferor before its midnight deadline.

**Sec. 5-114. Issuer's Duty and Privilege to Honor; Right
2 to Reimbursement.**—(1) An issuer must honor a draft or
3 demand for payment which complies with the terms of
4 the relevant credit regardless of whether the goods or
5 documents conform to the underlying contract for sale
6 or other contract between the customer and the bene-
7 ficiary. The issuer is not excused from honor of such a
8 draft or demand by reason of an additional general term
9 that all documents must be satisfactory to the issuer,

10 but an issuer may require that specified documents must
11 be satisfactory to it.

12 (2) Unless otherwise agreed when documents appear
13 on their face to comply with the terms of a credit but
14 a required document does not in fact conform to the
15 warranties made on negotiation or transfer of a docu-
16 ment of title (Section 7-507) or of a security (Section
17 8-306) or is forged or fraudulent or there is fraud in the
18 transaction

19 (a) the issuer must honor the draft or demand for
20 payment if honor is demanded by a negotiating bank
21 or other holder of the draft or demand which has taken
22 the draft or demand under the credit and under circum-
23 stances which would make it a holder in due course
24 (Section 3-302) and in an appropriate case would make
25 it a person to whom a document of title has been duly
26 negotiated (Section 7-502) or a bona fide purchaser of
27 a security (Section 8-302); and

28 (b) in all other cases as against its customer, an
29 issuer acting in good faith may honor the draft or de-
30 mand for payment despite notification from the cus-
31 tomer of fraud, forgery or other defect not apparent on
32 the face of the documents but a court of appropriate
33 jurisdiction may enjoin such honor.

34 (3) Unless otherwise agreed an issuer which has
35 duly honored a draft or demand for payment is entitled
36 to immediate reimbursement of any payment made un-
37 der the credit and to be put in effectively available funds
38 not later than the day before maturity of any accept-
39 ance made under the credit.

40 (4) When a credit provides for payment by the issuer
41 on receipt of notice that the required documents are in
42 the possession of a correspondent or other agent of the
43 issuer

44 (a) any payment made on receipt of such notice is
45 conditional; and

46 (b) the issuer may reject documents which do not
47 comply with the credit if it does so within three banking
48 days following its receipt of the documents; and

49 (c) in the event of such rejection, the issuer is en-

50 titled by charge back or otherwise to return of the pay-
51 ment made.

52 (5) In the case covered by subsection (4) failure to
53 reject documents within the time specified in subpara-
54 graph (b) constitutes acceptance of the documents and
55 makes the payment final in favor of the beneficiary.

Sec. 5-115. Remedy for Improper Dishonor or Antici-
2 **patory Repudiation.**—(1) When an issuer wrongfully dis-
3 honors a draft or demand for payment presented under
4 a credit the person entitled to honor has with respect
5 to any documents the rights of a person in the position
6 of a seller (Section 2-707) and may recover from the
7 issuer the face amount of the draft or demand together
8 with incidental damages under Section 2-710 on seller's
9 incidental damages and interest but less any amount
10 realized by resale or other use or disposition of the sub-
11 ject matter of the transaction. In the event no resale
12 or other utilization is made the documents, goods or
13 other subject matter involved in the transaction must
14 be turned over to the issuer on payment of judgment.

15 (2) When an issuer wrongfully cancels or otherwise
16 repudiates a credit before presentment of a draft or de-
17 mand for payment drawn under it the beneficiary has
18 the rights of a seller after anticipatory repudiation by
19 the buyer under Section 2-610 if he learns of the repudi-
20 ation in time reasonably to avoid procurement of the
21 required documents. Otherwise the beneficiary has an
22 immediate right of action for wrongful dishonor.

Sec. 5-116. Transfer and Assignment.—(1) The right
2 to draw under a credit can be transferred or assigned
3 only when the credit is expressly designated as trans-
4 ferable or assignable.

5 (2) Even though the credit specifically states that
6 it is nontransferable or nonassignable the beneficiary
7 may before performance of the conditions of the credit
8 assign his right to proceeds. Such an assignment is an
9 assignment of a contract right under Article 9 on Secured
10 Transactions and is governed by that article except that

11 (a) the assignment is ineffective until the letter of
12 credit or advice of credit is delivered to the assignee

13 which delivery constitutes perfection of the security
14 interest under Article 9; and

15 (b) the issuer may honor drafts or demands for pay-
16 ment drawn under the credit until it receives a notifica-
17 tion of the assignment signed by the beneficiary which
18 reasonably identifies the credit involved in the assign-
19 ment and contains a request to pay the assignee; and

20 (c) after what reasonably appears to be such a noti-
21 fication has been received the issuer may without dis-
22 honor refuse to accept or pay even to a person otherwise
23 entitled to honor until the letter of credit or advice of
24 credit is exhibited to the issuer.

25 (3) Except where the beneficiary has effectively
26 assigned his right to draw or his right to proceeds, noth-
27 ing in this section limits his right to transfer or negotiate
28 drafts or demands drawn under the credit.

**Sec. 5-117. Insolvency of Bank Holding Funds for Docu-
2 mentary Credit.**—(1) Where an issuer or an advising or
3 confirming bank or a bank which has for a customer
4 procured issuance of a credit by another bank becomes
5 insolvent before final payment under the credit and the
6 credit is one to which this article is made applicable by
7 paragraphs (a) or (b) of Section 5-102 (1) on scope, the
8 receipt or allocation of funds or collateral to secure or
9 meet obligations under the credit shall have the fol-
10 lowing results:

11 (a) to the extent of any funds or collateral turned
12 over after or before the insolvency as indemnity against
13 or specifically for the purpose of payment of drafts or
14 demands for payment drawn under the designated
15 credit, the drafts or demands are entitled to payment in
16 preference over depositors or other general creditors of
17 the issuer or bank; and

18 (b) on expiration of the credit or surrender of the
19 beneficiary's rights under it unused any person who has
20 given such funds or collateral is similarly entitled to
21 return thereof; and

22 (c) a charge to a general or current account with a
23 bank if specifically consented to for the purpose of in-
24 demnity against or payment of drafts or demands for
25 payment drawn under the designated credit falls under

26 the same rules as if the funds had been drawn out in
27 cash and then turned over with specific instructions.

28 (2) After honor or reimbursement under this section
29 the customer or other person for whose account the in-
30 solvent bank has acted is entitled to receive the docu-
31 ments involved.

Article 6. Bulk Transfers

Section 6-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Bulk
3 Transfers.

**Sec. 6-102. “Bulk Transfer”; Transfers of Equipment;
2 Enterprises Subject to This Article; Bulk Transfers Sub-
3 ject to This Article.**—(1) A “bulk transfer” is any transfer
4 in bulk and not in the ordinary course of the transferor’s
5 business of a major part of the materials, supplies, mer-
6 chandise or other inventory (Section 9-109) of an enter-
7 prise subject to this article.

8 (2) A transfer of a substantial part of the equipment
9 (Section 9-109) of such an enterprise is a bulk transfer
10 if it is made in connection with a bulk transfer of in-
11 ventory, but not otherwise.

12 (3) The enterprises subject to this article are all those
13 whose principal business is the sale of merchandise from
14 stock, including those who manufacture what they sell.

15 (4) Except as limited by the following section all
16 bulk transfers of goods located within this state are sub-
17 ject to this article.

Sec. 6-103. Transfers Excepted From This Article.—
2 The following transfers are not subject to this article:

3 (1) Those made to give security for the performance
4 of an obligation;

5 (2) General assignments for the benefit of all the cred-
6 itors of the transferor, and subsequent transfers by the
7 assignee thereunder;

8 (3) Transfers in settlement or realization of a lien or
9 other security interest;

10 (4) Sales by executors, administrators, receivers, trus-
11 tees in bankruptcy, or any public officer under judicial
12 process;

13 (5) Sales made in the course of judicial or administra-
14 tive proceedings for the dissolution or reorganization of
15 a corporation and of which notice is sent to the creditors
16 of the corporation pursuant to order of the court or ad-
17 ministrative agency;

18 (6) Transfers to a person maintaining a known place
19 of business in this state who becomes bound to pay the
20 debts of the transferor in full and gives public notice of
21 that fact, and who is solvent after becoming so bound;

22 (7) A transfer to a new business enterprise organized
23 to take over and continue the business, if public notice of
24 the transaction is given and the new enterprise assumes
25 the debts of the transferor and he receives nothing from
26 the transaction except an interest in the new enterprise
27 junior to the claims of creditors;

28 (8) Transfers of property which is exempt from
29 execution.

30 Public notice under subsection (6) or subsection (7)
31 may be given by publishing once a week for two consecu-
32 tive weeks in a newspaper of general circulation where
33 the transferor had its principal place of business in this
34 state an advertisement including the names and addresses
35 of the transferor and transferee and the effective date of
36 the transfer.

Sec. 6-104. Schedule of Property, List of Creditors.—

2 (1) Except as provided with respect to auction sales
3 (Section 6-108), a bulk transfer subject to this article is
4 ineffective against any creditor of the transferor unless:

5 (a) The transferee requires the transferor to furnish
6 a list of his existing creditors prepared as stated in this
7 section; and

8 (b) The parties prepare a schedule of the property
9 transferred sufficient to identify it; and

10 (c) The transferee preserves the list and schedule for
11 six months next following the transfer and permits in-
12 spection of either or both and copying therefrom at all
13 reasonable hours by any creditor of the transferor, or
14 files the list and schedule in the office of the county clerk
15 for the county in which the principal place of business
16 of the transferor is located.

17 (2) The list of creditors must be signed and sworn to
18 or affirmed by the transferor or his agent. It must con-
19 tain the names and business addresses of all creditors of
20 the transferor, with the amounts when known, and also
21 the names of all persons who are known to the transferor
22 to assert claims against him even though such claims are
23 disputed. If the transferor is the obligor of an outstand-
24 ing issue of bonds, debentures or the like as to which
25 there is an indenture trustee, the list of creditors need
26 include only the name and address of the indenture trust-
27 ee and the aggregate outstanding principal amount of the
28 issue.

29 (3) Responsibility for the completeness and accuracy
30 of the list of creditors rests on the transferor, and the
31 transfer is not rendered ineffective by errors or omissions
32 therein unless the transferee is shown to have had knowl-
33 edge.

Sec. 6-105. Notice to Creditors.—In addition to the re-
2 quirements of the preceding section, any bulk transfer
3 subject to this article except one made by auction sale
4 (Section 6-108) is ineffective against any creditor of the
5 transferor unless at least ten days before he takes posses-
6 sion of the goods or pays for them, whichever happens
7 first, the transferee gives notice of the transfer in the
8 manner and to the persons hereafter provided (Section
9 6-107).

Sec. 6-106. Application of the Proceeds.—In addition to
2 the requirements of the two preceding sections:

3 (1) Upon every bulk transfer subject to this article for
4 which new consideration becomes payable except those
5 made by sale at auction it is the duty of the transferee to
6 assure that such consideration is applied so far as neces-
7 sary to pay those debts of the transferor which are either
8 shown on the list furnished by the transferor (Section 6-
9 104) or filed in writing in the place stated in the notice
10 (Section 6-107) within thirty days after the mailing of
11 such notice. This duty of the transferee runs to all the
12 holders of such debts, and may be enforced by any of them
13 for the benefit of all.

14 (2) If any of said debts are in dispute the necessary

15 sum may be withheld from distribution until the dispute
16 is settled or adjudicated.

17 (3) If the consideration payable is not enough to pay
18 all of the said debts in full distribution shall be made pro
19 rata.

20 (4) The transferee may within ten days after he takes
21 possession of the goods pay the consideration into the cir-
22 cuit court in the county where the transferor had its prin-
23 cipal place of business in this state and thereafter may
24 discharge his duty under this section by giving notice by
25 registered or certified mail to all the persons to whom the
26 duty runs that the consideration has been paid into that
27 court and that they should file their claims there. On
28 motion of any interested party, the court may order the
29 distribution of the consideration to the persons entitled
30 to it.

Sec. 6-107. The Notice.—(1) The notice to creditors
2 (Section 6-105) shall state:

3 (a) that a bulk transfer is about to be made; and

4 (b) the names and business addresses of the transferor
5 and transferee, and all other business names and addresses
6 used by the transferor within three years last past so far
7 as known to the transferee; and

8 (c) whether or not all the debts of the transferor are
9 to be paid in full as they fall due as a result of the trans-
10 action, and if so, the address to which creditors should
11 send their bills.

12 (2) If the debts of the transferor are not to be paid in
13 full as they fall due or if the transferee is in doubt on that
14 point then the notice shall state further:

15 (a) the location and general description of the prop-
16 erty to be transferred and the estimated total of the trans-
17 feror's debts;

18 (b) the address where the schedule of property and
19 list of creditors (Section 6-104) may be inspected;

20 (c) whether the transfer is to pay existing debts and
21 if so the amount of such debts and to whom owing;

22 (d) whether the transfer is for new consideration and
23 if so the amount of such consideration and the time and
24 place of payment; and

25 (e) if for new consideration the time and place where
26 creditors of the transferor are to file their claims.

27 (3) The notice in any case shall be delivered person-
28 ally or sent by registered or certified mail to all the per-
29 sons shown on the list of creditors furnished by the trans-
30 feror (Section 6-104) and to all other persons who are
31 known to the transferee to hold or assert claims against
32 the transferor.

Sec. 6-108. Auction Sales; "Auctioneer".—(1) A bulk
2 transfer is subject to this article even though it is by sale
3 at auction, but only in the manner and with the results
4 stated in this section.

5 (2) The transferor shall furnish a list of his creditors
6 and assist in the preparation of a schedule of the property
7 to be sold, both prepared as before stated (Section 6-104).

8 (3) The person or persons other than the transferor
9 who direct, control or are responsible for the auction are
10 collectively called the "auctioneer". The auctioneer shall:

11 (a) receive and retain the list of creditors and pre-
12 pare and retain the schedule of property for the period
13 stated in this article (Section 6-104);

14 (b) give notice of the auction personally or by regis-
15 tered or certified mail at least ten days before it occurs
16 to all persons shown on the list of creditors and to all
17 other persons who are known to him to hold or assert
18 claims against the transferor; and

19 (c) assure that the net proceeds of the auction are
20 applied as provided in this article (Section 6-106).

21 (4) Failure of the auctioneer to perform any of these
22 duties does not affect the validity of the sale or the title
23 of the purchasers, but if the auctioneer knows that the
24 auction constitutes a bulk transfer such failure renders
25 the auctioneer liable to the creditors of the transferor as
26 a class for the sums owing to them from the transferor
27 up to but not exceeding the net proceeds of the auction.
28 If the auctioneer consists of several persons their liability
29 is joint and several.

**Sec. 6-109. What Creditors Protected; Credit for Pay-
2 ment to Particular Creditors.—**(1) The creditors of the
3 transferor mentioned in this article are those holding

4 claims based on transactions or events occurring before
5 the bulk transfer, but creditors who become such after
6 notice to creditors is given (Sections 6-105 and 6-107)
7 are not entitled to notice.

8 (2) Against the aggregate obligation imposed by the
9 provisions of this article concerning the application of
10 the proceeds (Section 6-106 and subsection (3) (c) of
11 6-108) the transferee or auctioneer is entitled to credit
12 for sums paid to particular creditors of the transferor,
13 not exceeding the sums believed in good faith at the
14 time of the payment to be properly payable to such
15 creditors.

Sec. 6-110. Subsequent Transfers.—When the title of
2 a transferee to property is subject to a defect by reason
3 of his non-compliance with the requirements of this
4 article, then:

5 (1) a purchaser of any of such property from such
6 transferee who pays no value or who takes with notice
7 of such non-compliance takes subject to such defect, but

8 (2) a purchaser for value in good faith and without
9 such notice takes free of such defect.

Sec. 6-111. Limitation of Actions and Levies.—No
2 action under this article shall be brought nor levy made
3 more than six months after the date on which the trans-
4 feree took possession of the goods unless the transfer
5 has been concealed. If the transfer has been concealed,
6 actions may be brought or levies made within six months
7 after its discovery.

Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title

PART 1. GENERAL

Section 7-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Docu-
3 ments of Title.

Sec. 7-102. Definitions and Index of Definitions.—(1)
2 In this article, unless the context otherwise requires:
3 (a) “Bailee” means the person who by a warehouse
4 receipt, bill of lading or other document of title

5 acknowledges possession of goods and contracts to deliver
6 them.

7 (b) "Consignee" means the person named in a bill to
8 whom or to whose order the bill promises delivery.

9 (c) "Consignor" means the person named in a bill
10 as the person from whom the goods have been received
11 for shipment.

12 (d) "Delivery order" means a written order to de-
13 liver goods directed to a warehouseman, carrier or other
14 person who in the ordinary course of business issues
15 warehouse receipts or bills of lading.

16 (e) "Document" means document of title as defined
17 in the general definitions in Article 1 (Section 1-201).

18 (f) "Goods" means all things which are treated as
19 movable for the purposes of a contract of storage or
20 transportation.

21 (g) "Issuer" means a bailee who issues a document
22 except that in relation to an unaccepted delivery order
23 it means the person who orders the possessor of goods
24 to deliver. Issuer includes any person for whom an agent
25 or employee purports to act in issuing a document if the
26 agent or employee has real or apparent authority to issue
27 documents, notwithstanding that the issuer received no
28 goods or that the goods were misdescribed or that in
29 any other respect the agent or employee violated his
30 instructions.

31 (h) "Warehouseman" is a person engaged in the busi-
32 ness of storing goods for hire.

33 (2) Other definitions applying to this article or to
34 specified parts thereof, and the sections in which they
35 appear are:

36 "Duly negotiate". Section 7-501.

37 "Person entitled under the document". Section 7-403
38 (4).

39 (3) Definitions in other articles of this chapter apply-
40 ing to this article and the sections in which they appear
41 are:

42 "Contract for sale". Section 2-106.

43 "Overseas". Section 2-323.

44 "Receipt" of goods. Section 2-103.

45 (4) In addition Article 1 of this chapter contains gen-

46 eral definitions and principles of construction and in-
47 terpretation applicable throughout this article.

**Sec. 7-103. Relation of Article to Treaty, Statute, Tariff,
2 Classification or Regulation.**—To the extent that any
3 treaty or statute of the United States, regulatory statute
4 of this state or tariff, classification or regulation filed or
5 issued pursuant thereto is applicable, the provisions of
6 this article are subject thereto.

**Sec. 7-104. Negotiable and Non-Negotiable Warehouse
2 Receipt, Bill of Lading or Other Document of Title.**— (1)
3 A warehouse receipt, bill of lading or other document of
4 title is negotiable

5 (a) if by its terms the goods are to be delivered to
6 bearer or to the order of a named person; or

7 (b) where recognized in overseas trade, if it runs to
8 a named person or assigns.

9 (2) Any other document is non-negotiable. A bill of
10 lading in which it is stated that the goods are consigned
11 to a named person is not made negotiable by a provision
12 that the goods are to be delivered only against a written
13 order signed by the same or another named person.

Sec. 7-105. Construction Against Negative Implication.
2 —The omission from either Part 2 or Part 3 of this article
3 of a provision corresponding to a provision made in the
4 other Part does not imply that a corresponding rule of
5 law is not applicable.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

**Sec. 7-201. Who May Issue a Warehouse Receipt; Stor-
2 age Under Government Bond.**—(1) A warehouse receipt
3 may be issued by any warehouseman.

4 (2) Where goods including distilled spirits and agri-
5 cultural commodities are stored under a statute requiring
6 a bond against withdrawal or a license for the issuance
7 of receipts in the nature of warehouse receipts, a receipt
8 issued for the goods has like effect as a warehouse receipt
9 even though issued by a person who is the owner of the
10 goods and is not a warehouseman.

Sec. 7-202. Form of Warehouse Receipt; Essential

2 **Terms; Optional Terms.**—(1) A warehouse receipt need
3 not be in any particular form.

4 (2) Unless a warehouse receipt embodies within its
5 written or printed terms each of the following, the ware-
6 houseman is liable for damages caused by the omission to
7 a person injured thereby:

8 (a) the location of the warehouse where the goods are
9 stored;

10 (b) the date of issue of the receipt;

11 (c) the consecutive number of the receipt;

12 (d) a statement whether the goods received will be
13 delivered to the bearer, to a specified person, or to a speci-
14 fied person or his order;

15 (e) the rate of storage and handling charges, except
16 that where goods are stored under a field warehousing
17 arrangement a statement of that fact is sufficient on a
18 non-negotiable receipt;

19 (f) a description of the goods or of the packages con-
20 taining them;

21 (g) the signature of the warehouseman, which may
22 be made by his authorized agent;

23 (h) if the receipt is issued for goods of which the
24 warehouseman is owner, either solely or jointly or in
25 common with others, the fact of such ownership; and

26 (i) a statement of the amount of advances made and
27 of liabilities incurred for which the warehouseman claims
28 a lien or security interest (Section 7-209). If the precise
29 amount of such advances made or of such liabilities in-
30 curred is, at the time of the issue of the receipt, unknown
31 to the warehouseman or to his agent who issues it, a state-
32 ment of the fact that advances have been made or liabili-
33 ties incurred and the purpose thereof is sufficient.

34 (3) A warehouseman may insert in his receipt any
35 other terms which are not contrary to the provisions of
36 this chapter and do not impair his obligation of delivery
37 (Section 7-403) or his duty of care (Section 7-204.) Any
38 contrary provisions shall be ineffective.

Sec. 7-203. Liability for Non-Receipt or Misdescription.

2 —A party to or purchaser for value in good faith of a doc-

3 ument of title other than a bill of lading relying in either
4 case upon the description therein of the goods may re-
5 cover from the issuer damages caused by the non-receipt
6 or misdescription of the goods, except to the extent that
7 the document conspicuously indicates that the issuer does
8 not know whether any part or all of the goods in fact were
9 received or conform to the description, as where the de-
10 scription is in terms of marks or labels or kind, quantity
11 or condition, or the receipt or description is qualified by
12 "contents, condition and quality unknown", "said to con-
13 tain" or the like, if such indication be true, or the party
14 or purchaser otherwise has notice.

Sec. 7-204. Duty of Care; Contractual Limitation of
2 **Warehouseman's Liability.**—(1) A warehouseman is liable
3 for damages for loss of or injury to the goods caused by
4 his failure to exercise such care in regard to them as a
5 reasonably careful man would exercise under like cir-
6 cumstances but unless otherwise agreed he is not liable
7 for damages which could not have been avoided by the
8 exercise of such care.

9 (2) Damages may be limited by a term in the ware-
10 house receipt or storage agreement limiting the amount
11 of liability in case of loss or damage, and setting forth a
12 specific liability per article or item, or value per unit of
13 weight, beyond which the warehouseman shall not be
14 liable: *Provided, however,* That such liability may on
15 written request of the bailor at the time of signing such
16 storage agreement or within a reasonable time after re-
17 ceipt of the warehouse receipt be increased on part or all
18 of the goods thereunder, in which event increased rates
19 may be charged based on such increased valuation, but
20 that no such increase shall be permitted contrary to a
21 lawful limitation of liability contained in the warehouse-
22 man's tariff, if any. No such limitation is effective with
23 respect to the warehouseman's liability for conversion to
24 his own use.

25 (3) Reasonable provisions as to the time and manner
26 of presenting claims and instituting actions based on the
27 bailment may be included in the warehouse receipt or
28 tariff.

Sec. 7-205. Title Under Warehouse Receipt Defeated in Certain Cases.—A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Sec. 7-206. Termination of Storage at Warehouseman's Option.—(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

36 (5) The warehouseman may satisfy his lien from
37 the proceeds of any sale or disposition under this section
38 but must hold the balance for delivery on the demand
39 of any person to whom he would have been bound to
40 deliver the goods.

Sec. 7-207. Goods Must Be Kept Separate; Fungible

2 **Goods.**—(1) Unless the warehouse receipt otherwise pro-
3 vides, a warehouseman must keep separate the goods
4 covered by each receipt so as to permit at all times iden-
5 tification and delivery of those goods except that differ-
6 ent lots of fungible goods may be commingled.

7 (2) Fungible goods so commingled are owned in
8 common by the persons entitled thereto and the ware-
9 houseman is severally liable to each owner for that
10 owner's share. Where because of overissue a mass of
11 fungible goods is insufficient to meet all the receipts
12 which the warehouseman has issued against it, the per-
13 sons entitled include all holders to whom overissued
14 receipts have been duly negotiated.

Sec. 7-208. Altered Warehouse Receipts.—Where a

2 blank in a negotiable warehouse receipt has been filled
3 in without authority, a purchaser for value and with-
4 out notice of the want of authority may treat the in-
5 scription as authorized. Any other unauthorized altera-
6 tion leaves any receipt enforceable against the issuer
7 according to its original tenor.

Sec. 7-209. Lien of Warehouseman.—(1) A warehouse-

2 man has a lien against the bailor on the goods covered
3 by a warehouse receipt or on the proceeds thereof in his
4 possession for charges for storage or transportation
5 (including demurrage and terminal charges), insurance,
6 labor, or charges present or future in relation to the
7 goods, and for expenses necessary for preservation of
8 the goods or reasonably incurred in their sale pursuant
9 to law. If the person on whose account the goods are
10 held is liable for like charges or expenses in relation to
11 other goods whenever deposited and it is stated in the
12 receipt that a lien is claimed for charges and expenses
13 in relation to other goods, the warehouseman also has
14 a lien against him for such charges and expenses whether

15 or not the other goods have been delivered by the ware-
16 houseman. But against a person to whom a negotiable
17 warehouse receipt is duly negotiated a warehouseman's
18 lien is limited to charges in an amount or at a rate speci-
19 fied on the receipt or if no charges are so specified then
20 to a reasonable charge for storage of the goods covered
21 by the receipt subsequent to the date of the receipt.

22 (2) The warehouseman may also reserve a security
23 interest against the bailor for a maximum amount speci-
24 fied on the receipt for charges other than those specified
25 in subsection (1), such as for money advanced and in-
26 terest. Such a security interest is governed by the
27 article on Secured Transactions (Article 9).

28 (3) A warehouseman's lien for charges and expenses
29 under subsection (1) or a security interest under sub-
30 section (2) is also effective against any person who so
31 entrusted the bailor with possession of the goods that
32 a pledge of them by him to a good faith purchaser for
33 value would have been valid but is not effective against
34 a person as to whom the document confers no right in
35 the goods covered by it under Section 7-503.

36 (4) A warehouseman loses his lien on any goods
37 which he voluntarily delivers or which he unjustifiably
38 refuses to deliver.

Sec. 7-210. Enforcement of Warehouseman's Lien—(1)

2 Except as provided in subsection (2), a warehouseman's
3 lien may be enforced by public or private sale of the
4 goods in bloc or in parcels, at any time or place and on
5 any terms which are commercially reasonable, after
6 notifying all persons known to claim an interest in the
7 goods. Such notification must include a statement of
8 the amount due, the nature of the proposed sale and the
9 time and place of any public sale. The fact that a better
10 price could have been obtained by a sale at a different
11 time or in a different method from that selected by the
12 warehouseman is not of itself sufficient to establish that
13 the sale was not made in a commercially reasonable
14 manner. If the warehouseman either sells the goods in
15 the usual manner in any recognized market therefor,
16 or if he sells at the price current in such market at the
17 time of his sale, or if he has otherwise sold in conform-

18 ity with commercially reasonable practices among
19 dealers in the type of goods sold, he has sold in a com-
20 mercially reasonable manner. A sale of more goods than
21 apparently necessary to be offered to insure satisfac-
22 tion of the obligation is not commercially reasonable
23 except in cases covered by the preceding sentence.

24 (2) A warehouseman's lien on goods other than
25 goods stored by a merchant in the course of his business
26 may be enforced only as follows:

27 (a) All persons known to claim an interest in the
28 goods must be notified.

29 (b) The notification must be delivered in person or
30 sent by registered or certified letter to the last known
31 address of any person to be notified.

32 (c) The notification must include an itemized state-
33 ment of the claim, a description of the goods subject to
34 the lien, a demand for payment within a specified time
35 not less than ten days after receipt of the notification,
36 and a conspicuous statement that unless the claim is
37 paid within that time the goods will be advertised for
38 sale and sold by auction at a specified time and place.

39 (d) The sale must conform to the terms of the noti-
40 fication.

41 (e) The sale must be held at the nearest suitable
42 place to that where the goods are held or stored.

43 (f) After the expiration of the time given in the
44 notification, an advertisement of the sale must be pub-
45 lished once a week for two weeks consecutively in a
46 newspaper of general circulation where the sale is to be
47 held. The advertisement must include a description of
48 the goods, the name of the person on whose account they
49 are being held, and the time and place of the sale. The
50 sale must take place at least fifteen days after the first
51 publication. If there is no newspaper of general cir-
52 culation where the sale is to be held, the advertisement
53 must be posted at least ten days before the sale in not
54 less than six conspicuous places in the neighborhood of
55 the proposed sale.

56 (3) Before any sale pursuant to this section any
57 person claiming a right in the goods may pay the amount
58 necessary to satisfy the lien and the reasonable expenses

59 incurred under this section. In that event the goods
60 must not be sold, but must be retained by the ware-
61 houseman subject to the terms of the receipt and this
62 article.

63 (4) The warehouseman may buy at any public sale
64 pursuant to this section.

65 (5) A purchaser in good faith of goods sold to en-
66 force a warehouseman's lien takes the goods free of any
67 rights of persons against whom the lien was valid, de-
68 spite noncompliance by the warehouseman with the
69 requirements of this section.

70 (6) The warehouseman may satisfy his lien from
71 the proceeds of any sale pursuant to this section but
72 must hold the balance, if any, for delivery on demand
73 to any person to whom he would have been bound to
74 deliver the goods.

75 (7) The rights provided by this section shall be in
76 addition to all other rights allowed by law to a creditor
77 against his debtor.

78 (8) Where a lien is on goods stored by a merchant
79 in the course of his business the lien may be enforced
80 in accordance with either subsection (1) or (2).

81 (9) The warehouseman is liable for damages caused
82 by failure to comply with the requirements for sale
83 under this section and in case of willful violation is
84 liable for conversion.

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

Sec. 7-301. Liability for Non-Receipt or Misdescription;
2 **"Said to Contain"; "Shipper's Load and Count"; Improper**
3 **Handling.—**(1) A consignee of a non-negotiable bill who
4 has given value in good faith or a holder to whom a nego-
5 tiable bill has been duly negotiated relying in either case
6 upon the description therein of the goods, or upon the
7 date therein shown, may recover from the issuer damages
8 caused by the misdating of the bill or the non-receipt or
9 misdescription of the goods, except to the extent that the
10 document indicates that the issuer does not know whether
11 any part or all of the goods in fact were received or con-
12 form to the description, as where the description is in
13 terms of marks or labels or kind, quantity, or condition

14 or the receipt or description is qualified by "contents or
15 condition of contents of packages unknown", "said to con-
16 tain", "shipper's weight, load and count" or the like, if
17 such indication be true.

18 (2) When goods are loaded by an issuer who is a com-
19 mon carrier, the issuer must count the packages of goods
20 if package freight and ascertain the kind and quantity if
21 bulk freight. In such cases "shipper's weight, load and
22 count" or other words indicating that the description was
23 made by the shipper are ineffective except as to freight
24 concealed by packages.

25 (3) When bulk freight is loaded by a shipper who
26 makes available to the issuer adequate facilities for
27 weighing such freight, an issuer who is a common carrier
28 must ascertain the kind and quantity within a reasonable
29 time after receiving the written request of the shipper to
30 do so. In such cases "shipper's weight" or other words
31 of like purport are ineffective.

32 (4) The issuer may by inserting in the bill the words
33 "shipper's weight, load and count" or other words of like
34 purport indicate that the goods were loaded by the ship-
35 per; and if such statement be true the issuer shall not be
36 liable for damages caused by the improper loading. But
37 their omission does not imply liability for such damages.

38 (5) The shipper shall be deemed to have guaranteed
39 to the issuer the accuracy at the time of shipment of the
40 description, marks, labels, number, kind, quantity, condi-
41 tion and weight, as furnished by him; and the shipper
42 shall indemnify the issuer against damage caused by in-
43 accuracies in such particulars. The right of the issuer to
44 such indemnity shall in no way limit his responsibility
45 and liability under the contract of carriage to any person
46 other than the shipper.

**Sec. 7-302. Through Bills of Lading and Similar Docu-
2 ments.—**(1) The issuer of a through bill of lading or other
3 document embodying an undertaking to be performed in
4 part by persons acting as its agents or by connecting car-
5 riers is liable to anyone entitled to recover on the docu-
6 ment for any breach by such other persons or by a con-
7 necting carrier of its obligation under the document but
8 to the extent that the bill covers an undertaking to be per-

9 formed overseas or in territory not contiguous to the con-
10 tinental United States or an undertaking including mat-
11 ters other than transportation this liability may be varied
12 by agreement of the parties.

13 (2) Where goods covered by a through bill of lading
14 or other document embodying an undertaking to be per-
15 formed in part by persons other than the issuer are re-
16 ceived by any such person, he is subject with respect to
17 his own performance while the goods are in his possession
18 to the obligation of the issuer. His obligation is dis-
19 charged by delivery of the goods to another such person
20 pursuant to the document, and does not include liability
21 for breach by any other such persons or by the issuer.

22 (3) The issuer of such through bill of lading or other
23 document shall be entitled to recover from the connecting
24 carrier or such other person in possession of the goods
25 when the breach of the obligation under the document
26 occurred, the amount it may be required to pay to anyone
27 entitled to recover on the document therefor, as may be
28 evidenced by any receipt, judgment, or transcript thereof,
29 and the amount of any expense reasonably incurred by
30 it in defending any action brought by anyone entitled to
31 recover on the document therefor.

Sec. 7-303. Diversion; Reconsignment; Change of In-
2 **structions.**—(1) Unless the bill of lading otherwise pro-
3 vides, the carrier may deliver the goods to a person or
4 destination other than that stated in the bill or may other-
5 wise dispose of the goods on instructions from

- 6 (a) the holder of a negotiable bill; or
7 (b) the consignor on a non-negotiable bill notwith-
8 standing contrary instructions from the consignee; or
9 (c) the consignee on a non-negotiable bill in the ab-
10 sence of contrary instructions from the consignor, if the
11 goods have arrived at the billed destination or if the con-
12 signee is in possession of the bill; or
13 (d) the consignee on a non-negotiable bill if he is en-
14 titled as against the consignor to dispose of them.

15 (2) Unless such instructions are noted on a negotiable
16 bill of lading, a person to whom the bill is duly negotiated
17 can hold the bailee according to the original terms.

Sec. 7-304. Bills of Lading in a Set.—(1) Except where
2 customary in overseas transportation, a bill of lading must
3 not be issued in a set of parts. The issuer is liable for
4 damages caused by violation of this subsection.

5 (2) Where a bill of lading is lawfully drawn in a set
6 of parts, each of which is numbered and expressed to be
7 valid only if the goods have not been delivered against
8 any other part, the whole of the parts constitute one bill.

9 (3) Where a bill of lading is lawfully issued in a set
10 of parts and different parts are negotiated to different per-
11 sons, the title of the holder to whom the first due negotia-
12 tion is made prevails as to both the document and the
13 goods even though any later holder may have received
14 the goods from the carrier in good faith and discharged
15 the carrier's obligation by surrender of his part.

16 (4) Any person who negotiates or transfers a single
17 part of a bill of lading drawn in a set is liable to holders
18 of that part as if it were the whole set.

19 (5) The bailee is obliged to deliver in accordance with
20 Part 4 of this article against the first presented part of a
21 bill of lading lawfully drawn in a set. Such delivery dis-
22 charges the bailee's obligation on the whole bill.

Sec. 7-305. Destination Bills.—(1) Instead of issuing
2 a bill of lading to the consignor at the place of shipment
3 a carrier may at the request of the consignor procure the
4 bill to be issued at destination or at any other place des-
5 ignated in the request.

6 (2) Upon request of anyone entitled as against the car-
7 rier to control the goods while in transit and on surrender
8 of any outstanding bill of lading or other receipt covering
9 such goods, the issuer may procure a substitute bill to be
10 issued at any place designated in the request.

Sec. 7-306. Altered Bills of Lading.—An unauthorized
2 alteration or filling in of a blank in a bill of lading leaves
3 the bill enforceable according to its original tenor.

Sec. 7-307. Lien of Carrier.—(1) A carrier has a lien on
2 the goods covered by a bill of lading for charges sub-
3 sequent to the date of its receipt of the goods for storage
4 or transportation (including demurrage and terminal
5 charges) and for expenses necessary for preservation of

6 the goods incident to their transportation or reasonably
7 incurred in their sale pursuant to law. But against a
8 purchaser for value of a negotiable bill of lading a car-
9 rier's lien is limited to charges stated in the bill or the
10 applicable tariffs, or if no charges are stated then to a
11 reasonable charge.

12 (2) A lien for charges and expenses under subsec-
13 tion (1) on goods which the carrier was required by
14 law to receive for transportation is effective against the
15 consignor or any person entitled to the goods unless the
16 carrier had notice that the consignor lacked authority
17 to subject the goods to such charges and expenses. Any
18 other lien under subsection (1) is effective against the
19 consignor and any person who permitted the bailor to
20 have control or possession of the goods unless the car-
21 rier had notice that the bailor lacked such authority.

22 (3) A carrier loses his lien on any goods which he
23 voluntarily delivers or which he unjustifiably refuses
24 to deliver.

Sec. 7-308. Enforcement of Carrier's Lien.—(1) A car-
2 rier's lien may be enforced by public or private sale of
3 the goods, in bloc or in parcels, at any time or place and
4 on any terms which are commercially reasonable, after
5 notifying all persons known to claim an interest in the
6 goods. Such notification must include a statement of
7 the amount due, the nature of the proposed sale and the
8 time and place of any public sale. The fact that a better
9 price could have been obtained by a sale at a different
10 time or in a different method from that selected by the
11 carrier is not of itself sufficient to establish that the sale
12 was not made in a commercially reasonable manner.
13 If the carrier either sells the goods in the usual manner
14 in any recognized market therefor or if he sells at the
15 price current in such market at the time of his sale or
16 if he has otherwise sold in conformity with commer-
17 cially reasonable practices among dealers in the type of
18 goods sold he has sold in a commercially reasonable
19 manner. A sale of more goods than apparently neces-
20 sary to be offered to ensure satisfaction of the obliga-
21 tion is not commercially reasonable except in cases
22 covered by the preceding sentence.

23 (2) Before any sale pursuant to this section any per-
24 son claiming a right in the goods may pay the amount
25 necessary to satisfy the lien and the reasonable expenses
26 incurred under this section. In that event the goods
27 must not be sold, but must be retained by the carrier
28 subject to the terms of the bill and this article.

29 (3) The carrier may buy at any public sale pur-
30 suant to this section.

31 (4) A purchaser in good faith of goods sold to en-
32 force a carrier's lien takes the goods free of any rights
33 of persons against whom the lien was valid, despite
34 noncompliance by the carrier with the requirements of
35 this section.

36 (5) The carrier may satisfy his lien from the pro-
37 ceeds of any sale pursuant to this section but must hold
38 the balance, if any, for delivery on demand to any per-
39 son to whom he would have been bound to deliver the
40 goods.

41 (6) The rights provided by this section shall be in
42 addition to all other rights allowed by law to a creditor
43 against his debtor.

44 (7) A carrier's lien may be enforced in accordance
45 with either subsection (1) or the procedure set forth in
46 subsection (2) of Section 7-210.

47 (8) The carrier is liable for damages caused by failure
48 to comply with the requirements for sale under this sec-
49 tion and in case of willful violation is liable for conver-
50 sion.

**Sec. 7-309. Duty of Care; Contractual Limitation of
2 Carrier's Liability.—**(1) A carrier who issues a bill of
3 lading whether negotiable or non-negotiable must exer-
4 cise the degree of care in relation to the goods which a
5 reasonably careful man would exercise under like cir-
6 cumstances. This subsection does not repeal or change
7 any law or rule of law which imposes liability upon a
8 common carrier for damages not caused by its negligence.
9 (2) Damages may be limited by a provision that the
10 carrier's liability shall not exceed a value stated in the
11 document if the carrier's rates are dependent upon value
12 and the consignor by the carrier's tariff is afforded an op-
13 portunity to declare a higher value or a value as lawfully

14 provided in the tariff, or where no tariff is filed he is oth-
15 erwise advised of such opportunity; but no such limitation
16 is effective with respect to the carrier's liability for con-
17 version to its own use.

18 (3) Reasonable provisions as to the time and manner
19 of presenting claims and instituting actions based on the
20 shipment may be included in a bill of lading or tariff.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

**Sec. 7-401. Irregularities in Issue of Receipt or Bill or
2 Conduct of Issuer.**—The obligations imposed by this article
3 on an issuer apply to a document of title regardless of the
4 fact that

5 (a) the document may not comply with the require-
6 ments of this article or of any other law or regulation re-
7 garding its issue, form or content; or

8 (b) the issuer may have violated laws regulating the
9 conduct of his business; or

10 (c) the goods covered by the document were owned
11 by the bailee at the time the document was issued; or

12 (d) the person issuing the document does not come
13 within the definition of a warehouseman if it purports to
14 be a warehouse receipt.

Sec. 7-402. Duplicate Receipt or Bill; Overissue.—
2 Neither a duplicate nor any other document of title pur-
3 porting to cover goods already represented by an out-
4 standing document of the same issuer confers any right
5 in the goods, except as provided in the case of bills in a
6 set, overissue of documents for fungible goods and substi-
7 tutes for lost, stolen or destroyed documents. But the
8 issuer is liable for damages caused by his overissue or fail-
9 ure to identify a duplicate document as such by conspicu-
10 ous notation on its face.

**Sec. 7-403. Obligation of Warehouseman or Carrier to
2 Deliver; Excuse.**—(1) The bailee must deliver the goods
3 to a person entitled under the document who complies
4 with subsections (2) and (3), unless and to the extent that
5 the bailee establishes any of the following:

- 6 (a) delivery of the goods to a person whose receipt
7 was rightful as against a claimant;
- 8 (b) damage to or delay, loss or destruction of the
9 goods for which the bailee is not liable;
- 10 (c) previous sale or other disposition of the goods
11 in lawful enforcement of a lien or on warehouseman's
12 lawful termination of storage;
- 13 (d) the exercise by a seller of his right to stop de-
14 livery pursuant to the provisions of the article on Sales
15 (Section 2-705);
- 16 (e) a diversion, reconsignment or other disposition
17 pursuant to the provisions of this article (Section 7-303)
18 or tariff regulating such right;
- 19 (f) release, satisfaction or any other fact affording
20 a personal defense against the claimant;
- 21 (g) any other lawful excuse.
- 22 (2) A person claiming goods covered by a docu-
23 ment of title must satisfy the bailee's lien where the
24 bailee so requests or where the bailee is prohibited by
25 law from delivering the goods until the charges are
26 paid.
- 27 (3) Unless the person claiming is one against whom
28 the document confers no right under Sec. 7-503 (1), he
29 must surrender for cancellation or notation of partial
30 deliveries any outstanding negotiable document cover-
31 ing the goods, and the bailee must cancel the document
32 or conspicuously note the partial delivery thereon or be
33 liable to any person to whom the document is duly
34 negotiated.
- 35 (4) "Person entitled under the document" means
36 holder in the case of a negotiable document, or the per-
37 son to whom delivery is to be made by the terms of or
38 pursuant to written instructions under a non-negotiable
39 document.

Sec. 7-404. No Liability for Good Faith Delivery Pur-
2 **suant to Receipt or Bill.**—A bailee who in good faith
3 including observance of reasonable commercial stand-
4 ards has received goods and delivered or otherwise
5 disposed of them according to the terms of the document
6 of title or pursuant to this article is not liable therefor.
7 This rule applies even though the person from whom he

8 received the goods had no authority to procure the
9 document or to dispose of the goods and even though
10 the person to whom he delivered the goods had no author-
11 ity to receive them.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF
LADING: NEGOTIATION AND TRANSFER

Sec. 7-501. Form of Negotiation and Requirements of
2 **"Due Negotiation".**—(1) A negotiable document of title
3 running to the order of a named person is negotiated
4 by his indorsement and delivery. After his indorsement
5 in blank or to bearer any person can negotiate it by
6 delivery alone.

7 (2) (a) A negotiable document of title is also nego-
8 tiated by delivery alone when by its original terms it
9 runs to bearer.

10 (b) When a document running to the order of a
11 named person is delivered to him the effect is the same
12 as if the document had been negotiated.

13 (3) Negotiation of a negotiable document of title
14 after it has been indorsed to a specified person requires
15 indorsement by the special indorsee as well as delivery.

16 (4) A negotiable document of title is "duly nego-
17 tiated" when it is negotiated in the manner stated in
18 this section to a holder who purchases it in good faith
19 without notice of any defense against or claim to it on
20 the part of any person and for value, unless it is estab-
21 lished that the negotiation is not in the regular course
22 of business or financing or involves receiving the docu-
23 ment in settlement or payment of a money obligation.

24 (5) Indorsement of a non-negotiable document
25 neither makes it negotiable nor adds to the transferee's
26 rights.

27 (6) The naming in a negotiable bill of a person to
28 be notified of the arrival of the goods does not limit
29 the negotiability of the bill nor constitute notice to a
30 purchaser thereof of any interest of such person in the
31 goods.

Sec. 7-502. Rights Acquired by Due Negotiation.—

2 (1) Subject to the following section and to the pro-

3 visions of Section 7-205 on fungible goods, a holder to
4 whom a negotiable document of title has been duly
5 negotiated acquires thereby:

6 (a) title to the document;

7 (b) title to the goods;

8 (c) all rights accruing under the law of agency or
9 estoppel, including rights to goods delivered to the bailee
10 after the document was issued; and

11 (d) the direct obligation of the issuer to hold or
12 deliver the goods according to the terms of the docu-
13 ment free of any defense or claim by him except those
14 arising under the terms of the document or under this
15 article. In the case of a delivery order the bailee's ob-
16 ligation accrues only upon acceptance and the obliga-
17 tion acquired by the holder is that the issuer and any
18 indorser will procure the acceptance of the bailee.

19 (2) Subject to the following section, title and rights
20 so acquired are not defeated by any stoppage of the
21 goods represented by the document or by surrender of
22 such goods by the bailee, and are not impaired even
23 though the negotiation or any prior negotiation consti-
24 tuted a breach of duty or even though any person has
25 been deprived of possession of the document by mis-
26 representation, fraud, accident, mistake, duress, loss,
27 theft or conversion, or even though a previous sale or
28 other transfer of the goods or document has been made
29 to a third person.

Sec. 7-503. Document of Title to Goods Defeated in

2 **Certain Cases.**—(1) A document of title confers no right
3 in goods against a person who before issuance of the
4 document had a legal interest or a perfected security
5 interest in them and who neither

6 (a) delivered or entrusted them or any document
7 of title covering them to the bailor or his nominee with
8 actual or apparent authority to ship, store or sell or
9 with power to obtain delivery under this article (Sec-
10 tion 7-403) or with power of disposition under this chapter
11 (Sections 2-403 and 9-307) or other statute or rule of
12 law; nor

13 (b) acquiesced in the procurement by the bailor or
14 his nominee of any document of title.

15 (2) Title to goods based upon an unaccepted delivery
16 order is subject to the rights of anyone to whom a nego-
17 tiable warehouse receipt or bill of lading covering the
18 goods has been duly negotiated. Such a title may be
19 defeated under the next section to the same extent as
20 the rights of the issuer or a transferee from the issuer.

21 (3) Title to goods based upon a bill of lading issued
22 to a freight forwarder is subject to the rights of anyone
23 to whom a bill issued by the freight forwarder is duly
24 negotiated; but delivery by the carrier in accordance
25 with Part 4 of this article pursuant to its own bill of
26 lading discharges the carrier's obligation to deliver.

**Sec. 7-504. Rights Acquired in the Absence of Due
2 Negotiation; Effect of Diversion; Seller's Stoppage of De-
3 livery.—(1)** A transferee of a document, whether nego-
4 tiable or non-negotiable, to whom the document has been
5 delivered but not duly negotiated, acquires the title and
6 rights which his transferor had or had actual authority
7 to convey.

8 (2) In the case of a non-negotiable document, until
9 but not after the bailee receives notification of the trans-
10 fer, the rights of the transferee may be defeated

11 (a) by those creditors of the transferor who could
12 treat the sale as void under Section 2-402; or

13 (b) by a buyer from the transferor in ordinary course
14 of business if the bailee has delivered the goods to the
15 buyer or received notification of his rights; or

16 (c) as against the bailee by good faith dealings of the
17 bailee with the transferor.

18 (3) A diversion or other change of shipping instruc-
19 tions by the consignor in a non-negotiable bill of lading
20 which causes the bailee not to deliver to the consignee de-
21 feats the consignee's title to the goods if they have been
22 delivered to a buyer in ordinary course of business and in
23 any event defeats the consignee's rights against the bailee.

24 (4) Delivery pursuant to a non-negotiable document
25 may be stopped by a seller under Section 2-705, and sub-
26 ject to the requirement of due notification there provided.
27 A bailee honoring the seller's instructions is entitled to be
28 indemnified by the seller against any resulting loss or ex-
29 pense.

Sec. 7-505. Indorser Not a Guarantor for Other Parties.

2 —The indorsement of a document of title issued by a
3 bailee does not make the indorser liable for any default
4 by the bailee or by previous indorsers.

Sec. 7-506. Delivery Without Indorsement; Right to

2 **Compel Indorsement.**—The transferee of a negotiable
3 document of title has a specifically enforceable right to
4 have his transferor supply any necessary indorsement but
5 the transfer becomes a negotiation only as of the time the
6 indorsement is supplied.

Sec. 7-507. Warranties on Negotiation or Transfer of

2 **Receipt or Bill.**—Where a person negotiates or transfers
3 a document of title for value otherwise than as a mere in-
4 termediary under the next following section, then unless
5 otherwise agreed he warrants to his immediate purchaser
6 only in addition to any warranty made in selling the
7 goods

8 (a) that the document is genuine; and

9 (b) that he has no knowledge of any fact which would
10 impair its validity or worth; and

11 (c) that his negotiation or transfer is rightful and fully
12 effective with respect to the title to the document and the
13 goods it represents.

Sec. 7-508. Warranties of Collecting Bank as to Docu-

2 **ments.**—A collecting bank or other intermediary known
3 to be entrusted with documents on behalf of another or
4 with collection of a draft or other claim against delivery
5 of documents warrants by such delivery of the documents
6 only its own good faith and authority. This rule applies
7 even though the intermediary has purchased or made ad-
8 vances against the claim or draft to be collected.

Sec. 7-509. Receipt or Bill: When Adequate Compliance

2 **With Commercial Contract.**—The question whether a
3 document is adequate to fulfill the obligations of a con-
4 tract for sale or the conditions of a credit is governed by
5 the articles on Sales (Article 2) and on Letters of Credit
6 (Article 5).

PART 6. WAREHOUSE RECEIPTS AND BILLS OF
LADING: MISCELLANEOUS PROVISIONS

Sec. 7-601. Lost and Missing Documents.—(1) If a
2 document has been lost, stolen or destroyed, a court may
3 order delivery of the goods or issuance of a substitute
4 document and the bailee may without liability to any per-
5 son comply with such order. If the document was nego-
6 tiable the claimant must post security approved by the
7 court to indemnify any person who may suffer loss as a
8 result of non-surrender of the document. If the docu-
9 ment was not negotiable, such security may be required
10 at the discretion of the court. The court may also in its
11 discretion order payment of the bailee's reasonable costs
12 and counsel fees.

13 (2) A bailee who without court order delivers goods
14 to a person claiming under a missing negotiable docu-
15 ment is liable to any person injured thereby, and if the
16 delivery is not in good faith becomes liable for conversion.
17 Delivery in good faith is not conversion if made in ac-
18 cordance with a filed classification or tariff or, where no
19 classification or tariff is filed, if the claimant posts security
20 with the bailee in an amount at least double the value of
21 the goods at the time of posting to indemnify any person
22 injured by the delivery who files a notice of claim within
23 one year after the delivery.

Sec. 7-602. Attachment of Goods Covered by a Nego-
2 **tiable Document.**—Except where the document was origi-
3 nally issued upon delivery of the goods by a person who
4 had no power to dispose of them, no lien attaches by vir-
5 tue of any judicial process to goods in the possession of a
6 bailee for which a negotiable document of title is out-
7 standing unless the document be first surrendered to the
8 bailee or its negotiation enjoined, and the bailee shall not
9 be compelled to deliver the goods pursuant to process un-
10 til the document is surrendered to him or impounded by
11 the court. One who purchases the document for value
12 without notice of the process or injunction takes free of
13 the lien imposed by judicial process.

Sec. 7-603. Conflicting Claims; Interpleader.—If more
2 than one person claims title or possession of the goods, the

3 bailee is excused from delivery until he has had a reason-
4 able time to ascertain the validity of the adverse claims
5 or to bring an action to compel all claimants to interplead
6 and may compel such interpleader, either in defending an
7 action for non-delivery of the goods, or by original action,
8 whichever is appropriate.

Article 8. Investment Securities

PART 1. SHORT TITLE AND GENERAL MATTERS

Section 8-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Invest-
3 ment Securities.

Sec. 8-102. Definitions and Index of Definitions.—
2 (1) In this article unless the context otherwise requires
3 (a) A “security” is an instrument which
4 (i) is issued in bearer or registered form; and
5 (ii) is of a type commonly dealt in upon securities
6 exchanges or markets or commonly recognized in any
7 area in which it is issued or dealt in as a medium for
8 investment; and
9 (iii) is either one of a class or series or by its terms
10 is divisible into a class or series of instruments; and
11 (iv) evidences a share, participation or other interest
12 in property or in an enterprise or evidences an obliga-
13 tion of the issuer.
14 (b) A writing which is a security is governed by
15 this article and not by Uniform Commercial Code—
16 Commercial Paper even though it also meets the require-
17 ments of that article. This article does not apply to
18 money.
19 (c) A security is in “registered form” when it speci-
20 fies a person entitled to the security or to the rights it
21 evidences and when its transfer may be registered upon
22 books maintained for that purpose by or on behalf of
23 an issuer or the security so states.
24 (d) A security is in “bearer form” when it runs to
25 bearer according to its terms and not by reason of any
26 indorsement.
27 (2) A “subsequent purchaser” is a person who takes
28 other than by original issue.

29 (3) A "clearing corporation" is a corporation all of
 30 the capital stock of which is held by or for a national
 31 securities exchange or association registered under a
 32 statute of the United States such as the Securities Ex-
 33 change Act of 1934.

34 (4) A "custodian bank" is any bank or trust com-
 35 pany which is supervised and examined by state or fed-
 36 eral authority having supervision over banks and which
 37 is acting as custodian for a clearing corporation.

38 (5) Other definitions applying to this article or to
 39 specified parts thereof and the sections in which they
 40 appear are:

41 "Adverse claim". Section 8-301.

42 "Bona fide purchaser". Section 8-302.

43 "Broker". Section 8-303.

44 "Guarantee of the signature". Section 8-402.

45 "Intermediary Bank". Section 4-105.

46 "Issuer". Section 8-201.

47 "Overissue". Section 8-104.

48 (6) In addition Article 1 of this chapter contains gen-
 49 eral definitions and principles of construction and in-
 50 terpretation applicable throughout this article.

Sec. 8-103. Issuer's Lien.—A lien upon a security in
 2 favor of an issuer thereof is valid against a purchaser
 3 only if the right of the issuer to such lien is noted con-
 4 spicuously on the security.

Sec. 8-104. Effect of Overissue; "Overissue."—(1) The
 2 provisions of this article which validate a security or com-
 3 pel its issue or reissue do not apply to the extent that val-
 4 idation, issue or reissue would result in overissue; but

5 (a) if an identical security which does not constitute
 6 an overissue is reasonably available for purchase, the per-
 7 son entitled to issue or validation may compel the issuer
 8 to purchase and deliver such a security to him against sur-
 9 render of the security, if any, which he holds; or

10 (b) if a security is not so available for purchase, the
 11 person entitled to issue or validation may recover from
 12 the issuer the price he or the last purchaser for value paid
 13 for it with interest from the date of his demand.

14 (2) "Overissue" means the issue of securities in excess

15 of the amount which the issuer has corporate power to
16 issue.

Sec. 8-105. Securities Negotiable; Presumptions.—(1)

2 Securities governed by this article are negotiable instru-
3 ments.

4 (2) In any action on a security

5 (a) unless specifically denied in the pleadings, each
6 signature on the security or in a necessary indorsement is
7 admitted;

8 (b) when the effectiveness of a signature is put in
9 issue the burden of establishing it is on the party claim-
10 ing under the signature but the signature is presumed to
11 be genuine or authorized;

12 (c) when signatures are admitted or established pro-
13 duction of the instrument entitles a holder to recover on
14 it unless the defendant establishes a defense or a defect
15 going to the validity of the security; and

16 (d) after it is shown that a defense or defect exists the
17 plaintiff has the burden of establishing that he or some
18 person under whom he claims is a person against whom
19 the defense or defect is ineffective (Section 8-202).

Sec. 8-106. Applicability.—The validity of a security

2 and the rights and duties of the issuer with respect to reg-
3 istration of transfer are governed by the law (including
4 the conflict of laws rules) of the jurisdiction of organiza-
5 tion of the issuer.

Sec. 8-107. Securities Deliverable; Action for Price.—

2 (1) Unless otherwise agreed and subject to any applicable
3 law or regulation respecting short sales, a person obli-
4 gated to deliver securities may deliver any security of the
5 specified issue in bearer form or registered in the name of
6 the transferee or indorsed to him or in blank.

7 (2) When the buyer fails to pay the price as it comes
8 due under a contract of sale the seller may recover the
9 price

10 (a) of securities accepted by the buyer; and

11 (b) of other securities if efforts at their resale would
12 be unduly burdensome or if there is no readily available
13 market for their resale.

PART 2. ISSUE—ISSUER

2 **Sec. 8-201. "Issuer."**—(1) With respect to obligations
3 on or defenses to a security "issuer" includes a person
4 who

5 (a) places or authorizes the placing of his name on
6 a security (otherwise than as authenticating trustee,
7 registrar, transfer agent or the like) to evidence that it
8 represents a share, participation or other interest in his
9 property or in an enterprise or to evidence his duty to
10 perform an obligation evidenced by the security; or

11 (b) directly or indirectly creates fractional interests
12 in his rights or property which fractional interests are
13 evidenced by securities; or

14 (c) becomes responsible for or in place of any other
15 person described as an issuer in this section.

16 (2) With respect to obligations on or defenses to a
17 security a guarantor is an issuer to the extent of his
18 guaranty whether or not his obligation is noted on the
19 security.

20 (3) With respect to registration of transfer (Part
21 4 of this article) "issuer" means a person on whose be-
half transfer books are maintained.

2 **Sec. 8-202. Issuer's Responsibility and Defenses; Notice**
3 **of Defect or Defense.**—(1) Even against a purchaser for
4 value and without notice, the terms of a security include
5 those stated on the security and those made part of the
6 security by reference to another instrument, indenture
7 or document or to a constitution, statute, ordinance, rule,
8 regulation, order or the like to the extent that the terms
9 so referred to do not conflict with the stated terms.
10 Such a reference does not of itself charge a purchaser
11 for value with notice of a defect going to the validity
12 of the security even though the security expressly states
13 that a person accepting it admits such notice.

14 (2) (a) A security other than one issued by a gov-
15 ernment or governmental agency or unit even though
16 issued with a defect going to its validity is valid in the
17 hands of a purchaser for value and without notice of
18 the particular defect unless the defect involves a viola-
tion of constitutional provisions in which case the secur-

19 ity is valid in the hands of a subsequent purchaser for
20 value and without notice of the defect.

21 (b) The rule of subparagraph (a) applies to an issuer
22 which is a government or governmental agency or unit
23 only if either there has been substantial compliance
24 with the legal requirements governing the issue or the
25 issuer has received a substantial consideration for the
26 issue as a whole or for the particular security and a
27 stated purpose of the issue is one for which the issuer
28 has power to borrow money or issue the security.

29 (3) Except as otherwise provided in the case of cer-
30 tain unauthorized signatures on issue (Section 8-205),
31 lack of genuineness of a security is a complete defense
32 even against a purchaser for value and without notice.

33 (4) All other defenses of the issuer including non-
34 delivery and conditional delivery of the security are in-
35 effective against a purchaser for value who has taken
36 without notice of the particular defense.

37 (5) Nothing in this section shall be construed to
38 affect the right of a party to a "when, as and if issued"
39 or a "when distributed" contract to cancel the contract
40 in the event of a material change in the character of
41 the security which is the subject of the contract or in
42 the plan or arrangement pursuant to which such security
43 is to be issued or distributed.

Sec. 8-203. Staleness as Notice of Defects or Defenses.—

2 (1) After an act or event which creates a right to im-
3 mediate performance of the principal obligation evidenced
4 by the security or which sets a date on or after which the
5 security is to be presented or surrendered for redemption
6 or exchange, a purchaser is charged with notice of any
7 defect in its issue or defense of the issuer

8 (a) if the act or event is one requiring the payment
9 of money or the delivery of securities or both on presen-
10 tation or surrender of the security and such funds or se-
11 curities are available on the date set for payment or ex-
12 change and he takes the security more than one year after
13 that date; and

14 (b) if the act or event is not covered by paragraph (a)
15 and he takes the security more than two years after the
16 date set for surrender or presentation or the date on

17 which such performance became due.

18 (2) A call which has been revoked is not within sub-
19 section (1).

Section 8-204. Effect of Issuer's Restrictions on Transfer.—
2 **fer.**—Unless noted conspicuously on the security a re-
3 striction on transfer imposed by the issuer even though
4 otherwise lawful is ineffective except against a person
5 with actual knowledge of it.

Sec. 8-205. Effect of Unauthorized Signature on Issue.—
2 An unauthorized signature placed on a security prior to
3 or in the course of issue is ineffective except that the sig-
4 nature is effective in favor of a purchaser for value and
5 without notice of the lack of authority if the signing has
6 been done by

7 (a) an authenticating trustee, registrar, transfer agent
8 or other person entrusted by the issuer with the signing
9 of the security or of similar securities or their immediate
10 preparation for signing; or

11 (b) an employee of the issuer or of any of the forego-
12 ing entrusted with responsible handling of the security.

Sec. 8-206. Completion or Alteration of Instrument.—

2 (1) Where a security contains the signatures necessary to
3 its issue or transfer but is incomplete in any other respect

4 (a) any person may complete it by filling in the blanks
5 as authorized; and

6 (b) even though the blanks are incorrectly filled in,
7 the security as completed is enforceable by a purchaser
8 who took it for value and without notice of such incorrect-
9 ness.

10 (2) A complete security which has been improperly
11 altered even though fraudulently remains enforceable but
12 only according to its original terms.

**Sec. 8-207. Rights of Issuer With Respect to Registered
2 Owners.**—(1) Prior to due presentment for registration
3 of transfer of a security in registered form the issuer or
4 indenture trustee may treat the registered owner as the
5 person exclusively entitled to vote, to receive notifications
6 and otherwise to exercise all the rights and powers of an
7 owner.

8 (2) Nothing in this article shall be construed to affect

9 the liability of the registered owner of a security for calls,
10 assessments or the like.

Sec. 8-208. Effect of Signature of Authenticating Trustee, Registrar or Transfer Agent.—(1) A person placing
2 his signature upon a security as authenticating trustee,
3 registrar, transfer agent or the like warrants to a pur-
4 chaser for value without notice of the particular defect
5 that
6 that
7 (a) the security is genuine; and
8 (b) his own participation in the issue of the security
9 is within his capacity and within the scope of the author-
10 ization received by him from the issuer; and
11 (c) he has reasonable grounds to believe that the se-
12 curity is in the form and within the amount the issuer is
13 authorized to issue.
14 (2) Unless otherwise agreed, a person by so placing
15 his signature does not assume responsibility for the va-
16 lidity of the security in other respects.

PART 3. PURCHASE

Sec. 8-301. Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser.—(1)
2 Upon delivery of a security the purchaser acquires the
3 rights in the security which his transferor had or had ac-
4 tual authority to convey except that a purchaser who has
5 himself been a party to any fraud or illegality affecting
6 the security or who as a prior holder had notice of an ad-
7 verse claim cannot improve his position by taking from a
8 later bona fide purchaser. "Adverse claim" includes a
9 claim that a transfer was or would be wrongful or that a
10 particular adverse person is the owner of or has an inter-
11 est in the security.
12 (2) A bona fide purchaser in addition to acquiring the
13 rights of a purchaser also acquires the security free of any
14 adverse claim.
15 (3) A purchaser of a limited interest acquires rights
16 only to the extent of the interest purchased.

Sec. 8-302. "Bona Fide Purchaser."—A "bona fide pur-
2 chaser" is a purchaser for value in good faith and without
3 notice of any adverse claim who takes delivery of a se-

4 curity in bearer form or of one in registered form issued
5 to him or indorsed to him or in blank.

Sec. 8-303. "Broker".—"Broker" means a person en-
2 gaged for all or part of his time in the business of buying
3 and selling securities, who in the transaction concerned
4 acts for, or buys a security from or sells a security to a
5 customer. Nothing in this article determines the capacity
6 in which a person acts for purposes of any other statute
7 or rule to which such person is subject.

Sec. 8-304. Notice to Purchaser of Adverse Claims.—

2 (1) A purchaser (including the broker for the seller or
3 buyer but excluding an intermediary bank) of a security
4 is charged with notice of adverse claims if

5 (a) the security whether in bearer or registered form
6 has been indorsed "for collection" or "for surrender" or
7 for some other purpose not involving transfer; or

8 (b) the security is in bearer form and has on it an un-
9 ambiguous statement that it is the property of a person
10 other than the transferor. The mere writing of a name
11 on a security is not such a statement.

12 (2) The fact that the purchaser (including a broker
13 for the seller or buyer) has notice that the security is held
14 for a third person or is registered in the name of or in-
15 dorsed by a fiduciary does not create a duty of inquiry
16 into the rightfulness of the transfer or constitute notice
17 of adverse claims. If, however, the purchaser (excluding
18 an intermediary bank) has knowledge that the proceeds
19 are being used or that the transaction is for the individual
20 benefit of the fiduciary or otherwise in breach of duty, the
21 purchaser is charged with notice of adverse claims.

Sec. 8-305. Staleness as Notice of Adverse Claims.—An

2 act or event which creates a right to immediate perform-
3 ance of the principal obligation evidenced by the security
4 or which sets a date on or after which the security is to
5 be presented or surrendered for redemption or exchange
6 does not of itself constitute any notice of adverse claims
7 except in the case of a purchase

8 (a) after one year from any date set for such present-
9 ment or surrender for redemption or exchange; or

10 (b) after six months from any date set for payment

11 of money against presentation or surrender of the secur-
12 ity if funds are available for payment on that date.

Sec. 8-306. Warranties on Presentment and Transfer.—

2 (1) A person who presents a security for registration of
3 transfer or for payment or exchange warrants to the issuer
4 that he is entitled to the registration, payment or ex-
5 change. But a purchaser for value without notice of ad-
6 verse claims who receives a new, reissued or re-registered
7 security on registration of transfer warrants only that he
8 has no knowledge of any unauthorized signature (Section
9 8-311) in a necessary indorsement.

10 (2) A person by transferring a security to a purchaser
11 for value warrants only that

12 (a) his transfer is effective and rightful; and

13 (b) the security is genuine and has not been materi-
14 ally altered; and

15 (c) he knows no fact which might impair the validity
16 of the security.

17 (3) Where a security is delivered by an intermediary
18 known to be entrusted with delivery of the security on
19 behalf of another or with collection of a draft or other
20 claim against such delivery, the intermediary by such de-
21 livery warrants only his own good faith and authority
22 even though he has purchased or made advances against
23 the claim to be collected against the delivery.

24 (4) A pledgee or other holder for security who rede-
25 livers the security received, or after payment and on or-
26 der of the debtor delivers that security to a third person
27 makes only the warranties of an intermediary under sub-
28 section (3).

29 (5) A broker gives to his customer and to the issuer
30 and a purchaser the warranties provided in this section
31 and has the rights and privileges of a purchaser under this
32 section. The warranties of and in favor of the broker
33 acting as an agent are in addition to applicable warranties
34 given by and in favor of his customer.

Sec. 8-307. Effect of Delivery Without Indorsement;

2 **Right to Compel Indorsement.**—Where a security in regis-
3 tered form has been delivered to a purchaser without a
4 necessary indorsement he may become a bona fide pur-

5 chaser only as of the time the indorsement is supplied,
6 but against the transferor the transfer is complete upon
7 delivery and the purchaser has a specifically enforceable
8 right to have any necessary indorsement supplied.

Sec. 8-308. Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment.—

3 (1) An indorsement of a security in registered form is
4 made when an appropriate person signs on it or on a
5 separate document an assignment or transfer of the
6 security or a power to assign or transfer it or when the
7 signature of such person is written without more upon
8 the back of the security.

9 (2) An indorsement may be in blank or special. An
10 indorsement in blank includes an indorsement to bearer.
11 A special indorsement specifies the person to whom the
12 security is to be transferred, or who has power to trans-
13 fer it. A holder may convert a blank indorsement into
14 a special indorsement.

15 (3) "An appropriate person" in subsection (1) means
16 (a) the person specified by the security or by special
17 indorsement to be entitled to the security; or

18 (b) where the person so specified is described as a
19 fiduciary but is no longer serving in the described ca-
20 pacity,—either that person or his successor; or

21 (c) where the security or indorsement so specifies
22 more than one person as fiduciaries and one or more are
23 no longer serving in the described capacity,—the remain-
24 ing fiduciary or fiduciaries, whether or not a successor
25 has been appointed or qualified; or

26 (d) where the person so specified is an individual
27 and is without capacity to act by virtue of death, in-
28 competence, infancy or otherwise,—his executor, admin-
29 istrator, guardian or like fiduciary; or

30 (e) where the security or indorsement so specifies
31 more than one person as tenants by the entirety or with
32 right of survivorship and by reason of death all cannot
33 sign,—the survivor or survivors; or

34 (f) a person having power to sign under applicable
35 law or controlling instrument; or

36 (g) to the extent that any of the foregoing persons
37 may act through an agent,—his authorized agent.

38 (4) Unless otherwise agreed the indorser by his in-
39 dorsement assumes no obligation that the security will
40 be honored by the issuer.

41 (5) An indorsement purporting to be only of part of
42 a security representing units intended by the issuer to
43 be separately transferable is effective to the extent of
44 the indorsement.

45 (6) Whether the person signing is appropriate is
46 determined as of the date of signing and an indorsement
47 by such a person does not become unauthorized for the
48 purposes of this article by virtue of any subsequent
49 change of circumstances.

50 (7) Failure of a fiduciary to comply with a control-
51 ling instrument or with the law of the state having juris-
52 diction of the fiduciary relationship, including any law
53 requiring the fiduciary to obtain court approval of the
54 transfer, does not render his indorsement unauthorized
55 for the purposes of this article.

Sec. 8-309. Effect of Indorsement Without Delivery.—

2 An indorsement of a security whether special or in blank
3 does not constitute a transfer until delivery of the
4 security on which it appears or if the indorsement is on
5 a separate document until delivery of both the docu-
6 ment and the security.

Sec. 8-310. Indorsement of Security in Bearer Form.—

2 An indorsement of a security in bearer form may give
3 notice of adverse claims (Section 8-304) but does not
4 otherwise affect any right to registration the holder may
5 possess.

Sec. 8-311. Effect of Unauthorized Indorsement.—

2 Unless the owner has ratified an unauthorized indorse-
3 ment or is otherwise precluded from asserting its in-
4 effectiveness

5 (a) he may assert its ineffectiveness against the
6 issuer or any purchaser other than a purchaser for value
7 and without notice of adverse claims who has in good
8 faith received a new, reissued or re-registered security
9 on registration of transfer; and

10 (b) an issuer who registers the transfer of a security
11 upon the unauthorized indorsement is subject to liability
12 for improper registration (Section 8-404).

Sec. 8-312. Effect of Guaranteeing Signature or Indorsement.—(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and
(b) the signer was an appropriate person to indorse (Section 8-308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

Sec. 8-313. When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder.—(1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under Section 8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsec-

21 tion (1). Where a security is part of a fungible bulk the
22 purchaser is the owner of a proportionate property in-
23 terest in the fungible bulk.

24 (3) Notice of an adverse claim received by the broker
25 or by the purchaser after the broker takes delivery as
26 a holder for value is not effective either as to the broker
27 or as to the purchaser. However, as between the broker
28 and the purchaser the purchaser may demand delivery
29 of an equivalent security as to which no notice of an
30 adverse claim has been received.

Sec. 8-314. Duty to Deliver, When Completed.—(1) Un-
2 less otherwise agreed where a sale of a security is made
3 on an exchange or otherwise through brokers

4 (a) the selling customer fulfills his duty to deliver
5 when he places such a security in the possession of the
6 selling broker or of a person designated by the broker or if
7 requested causes an acknowledgment to be made to the
8 selling broker that it is held for him; and

9 (b) the selling broker including a correspondent
10 broker acting for a selling customer fulfills his duty to
11 deliver by placing the security or a like security in the
12 possession of the buying broker or a person designated by
13 him or by effecting clearance of the sale in accordance
14 with the rules of the exchange on which the transaction
15 took place.

16 (2) Except as otherwise provided in this section and
17 unless otherwise agreed, a transferor's duty to deliver a
18 security under a contract of purchase is not fulfilled until
19 he places the security in form to be negotiated by the
20 purchaser in the possession of the purchaser or of a person
21 designated by him or at the purchaser's request causes
22 an acknowledgment to be made to the purchaser that it is
23 held for him. Unless made on an exchange a sale to a
24 broker purchasing for his own account is within this sub-
25 section and not within subsection (1).

Sec. 8-315. Action Against Purchaser Based Upon
2 **Wrongful Transfer.**—(1) Any person against whom the
3 transfer of a security is wrongful for any reason, includ-
4 ing his incapacity, may against anyone except a bona fide
5 purchaser reclaim possession of the security or obtain

6 possession of any new security evidencing all or part of
7 the same rights or have damages.

8 (2) If the transfer is wrongful because of an unau-
9 thorized indorsement, the owner may also reclaim or ob-
10 tain possession of the security or new security even from
11 a bona fide purchaser if the ineffectiveness of the pur-
12 ported indorsement can be asserted against him under the
13 provisions of this article on unauthorized indorsements
14 (Section 8-311).

15 (3) The right to obtain or reclaim possession of a se-
16 curity may be specifically enforced and its transfer en-
17 joined and the security impounded pending the litigation.

Sec. 8-316. Purchaser's Right to Requisites for Registra-
2 **tion of Transfer on Books.**—Unless otherwise agreed the
3 transferor must on due demand supply his purchaser with
4 any proof of his authority to transfer or with any other
5 requisite which may be necessary to obtain registration of
6 the transfer of the security but if the transfer is not for
7 value a transferor need not do so unless the purchaser
8 furnishes the necessary expenses. Failure to comply with
9 a demand made within a reasonable time gives the pur-
10 chaser the right to reject or rescind the transfer.

Sec. 8-317. Attachment or Levy Upon Security.—(1) No
2 attachment or levy upon a security or any share or other
3 interest evidenced thereby which is outstanding shall be
4 valid until the security is actually seized by the officer
5 making the attachment or levy but a security which has
6 been surrendered to the issuer may be attached or levied
7 upon at the source.

8 (2) A creditor whose debtor is the owner of a security
9 shall be entitled to such aid from courts of appropriate
10 jurisdiction, by injunction or otherwise, in reaching such
11 security or in satisfying the claim by means thereof as is
12 allowed at law or in equity in regard to property which
13 cannot readily be attached or levied upon by ordinary
14 legal process.

Sec. 8-318. No Conversion by Good Faith Delivery.—
2 An agent or bailee who in good faith (including ob-
3 servance of reasonable commercial standards if he is in
4 the business of buying, selling or otherwise dealing with

5 securities) has received securities and sold, pledged or
6 delivered them according to the instructions of his prin-
7 cipal is not liable for conversion or for participation in
8 breach of fiduciary duty although the principal had no
9 right to dispose of them.

Sec. 8-319. Statute of Frauds.—A contract for the sale
2 of securities is not enforceable by way of action or de-
3 fense unless

4 (a) there is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent
6 or broker sufficient to indicate that a contract has been
7 made for sale of a stated quantity of described secur-
8 ities at a defined or stated price; or

9 (b) delivery of the security has been accepted or
10 payment has been made but the contract is enforceable
11 under this provision only to the extent of such delivery
12 or payment; or

13 (c) within a reasonable time a writing in confirma-
14 tion of the sale or purchase and sufficient against the
15 sender under paragraph (a) has been received by the
16 party against whom enforcement is sought and he has
17 failed to send written objection to its contents within
18 ten days after its receipt; or

19 (d) the party against whom enforcement is sought
20 admits in his pleading, testimony or otherwise in court
21 that a contract was made for sale of a stated quantity
22 of described securities at a defined or stated price.

Sec. 8-320. Transfer or Pledge within a Central Depository System.—(1) If a security

3 (a) is in the custody of a clearing corporation or of
4 a custodian bank or a nominee of either subject to the in-
5 structions of the clearing corporation; and

6 (b) is in bearer form or indorsed in blank by an
7 appropriate person or registered in the name of the
8 clearing corporation or custodian bank or a nominee of
9 either; and

10 (c) is shown on the account of a transferor or
11 pledgor on the books of the clearing corporation;
12 then, in addition to other methods, a transfer or pledge
13 of the security or any interest therein may be effected

14 by the making of appropriate entries on the books of
15 the clearing corporation reducing the account of the
16 transferor or pledgor and increasing the account of the
17 transferee or pledgee by the amount of the obligation
18 or the number of shares or rights transferred or pledged.

19 (2) Under this section entries may be with respect
20 to like securities or interests therein as a part of a fung-
21 ible bulk and may refer merely to a quantity of a par-
22 ticular security without reference to the name of the
23 registered owner, certificate or bond number or the like
24 and, in appropriate cases, may be on a net basis taking
25 into account other transfers or pledges of the same
26 security.

27 (3) A transfer or pledge under this section has the
28 effect of a delivery of a security in bearer form or duly
29 indorsed in blank (Section 8-301) representing the
30 amount of the obligation or the number of shares or
31 rights transferred or pledged. If a pledge or the cre-
32 ation of a security interest is intended, the making of
33 entries has the effect of a taking of delivery by the
34 pledgee or a secured party (Sections 9-304 and 9-305).
35 A transferee or pledgee under this section is a holder.

36 (4) A transfer or pledge under this section does not
37 constitute a registration of transfer under Part 4 of this
38 article.

39 (5) That entries made on the books of the clearing
40 corporation as provided in subsection (1) are not appro-
41 priate does not affect the validity or effect of the en-
42 tries nor the liabilities or obligations of the clearing
43 corporation to any person adversely affected thereby.

PART 4. REGISTRATION

Sec. 8-401. Duty of Issuer to Register Transfer.—(1)

2 Where a security in registered form is presented to the
3 issuer with a request to register transfer, the issuer is
4 under a duty to register the transfer as requested if

5 (a) the security is indorsed by the appropriate per-
6 son or persons (Section 8-308); and

7 (b) reasonable assurance is given that those indorse-
8 ments are genuine and effective (Section 8-402); and

9 (c) the issuer has no duty to inquire into adverse

10 claims or has discharged any such duty (Section 8-403);
11 and

12 (d) any applicable law relating to the collection of
13 taxes has been complied with; and

14 (e) the transfer is in fact rightful or is to a bona fide
15 purchaser.

16 (2) Where an issuer is under a duty to register a
17 transfer of a security the issuer is also liable to the per-
18 son presenting it for registration or his principal for loss
19 resulting from any unreasonable delay in registration
20 or from failure or refusal to register the transfer.

Sec. 8-402. Assurance that Indorsements Are Effec-
2 **tive.**—(1) The issuer may require the following assurance
3 that each necessary indorsement (Section 8-308) is
4 genuine and effective

5 (a) in all cases, a guarantee of the signature (sub-
6 section (1) of Section 8-312) of the person indorsing; and

7 (b) where the indorsement is by an agent, appro-
8 priate assurance of authority to sign;

9 (c) where the indorsement is by a fiduciary, appro-
10 priate evidence of appointment or incumbency;

11 (d) where there is more than one fiduciary, reason-
12 able assurance that all who are required to sign have
13 done so;

14 (e) where the indorsement is by a person not cov-
15 ered by any of the foregoing, assurance appropriate to
16 the case corresponding as nearly as may be to the fore-
17 going.

18 (2) A “guarantee of the signature” in subsection
19 (1) means a guarantee signed by or on behalf of a per-
20 son reasonably believed by the issuer to be responsible.
21 The issuer may adopt standards with respect to respon-
22 sibility provided such standards are not manifestly
23 unreasonable.

24 (3) “Appropriate evidence of appointment or incum-
25 bency” in subsection (1) means

26 (a) in the case of a fiduciary appointed or qualified
27 by a court, a certificate issued by or under the direction
28 or supervision of that court or an officer thereof and
29 dated within sixty days before the date of presentation
30 for transfer; or

31 (b) in any other case, a copy of a document showing
32 the appointment or a certificate issued by or on behalf
33 of a person reasonably believed by the issuer to be re-
34 sponsible or, in the absence of such a document or
35 certificate, other evidence reasonably deemed by the
36 issuer to be appropriate. The issuer may adopt stand-
37 ards with respect to such evidence provided such stand-
38 ards are not manifestly unreasonable. The issuer is not
39 charged with notice of the contents of any document
40 obtained pursuant to this paragraph (b) except to the
41 extent that the contents relate directly to the appoint-
42 ment or incumbency.

43 (4) The issuer may elect to require reasonable as-
44 surance beyond that specified in this section but if it
45 does so and for a purpose other than that specified in
46 subsection 3(b) both requires and obtains a copy of a
47 will, trust, indenture, articles of co-partnership, by-laws
48 or other controlling instrument it is charged with notice
49 of all matters contained therein affecting the transfer.

Sec. 8-403. Limited Duty of Inquiry.—(1) An issuer
2 to whom a security is presented for registration is under
3 a duty to inquire into adverse claims if

4 (a) a written notification of an adverse claim is re-
5 ceived at a time and in a manner which affords the issuer
6 a reasonable opportunity to act on it prior to the issuance
7 of a new, reissued or re-registered security and the noti-
8 fication identifies the claimant, the registered owner and
9 the issue of which the security is a part and provides an
10 address for communications directed to the claimant; or

11 (b) the issuer is charged with notice of an adverse
12 claim from a controlling instrument which it has elected
13 to require under subsection (4) of Section 8-402.

14 (2) The issuer may discharge any duty of inquiry by
15 any reasonable means, including notifying an adverse
16 claimant by registered or certified mail at the address fur-
17 nished by him or if there be no such address at his resi-
18 dence or regular place of business that the security has
19 been presented for registration of transfer by a named
20 person, and that the transfer will be registered unless
21 within thirty days from the date of mailing the notifica-
22 tion, either

23 (a) an appropriate restraining order, injunction or
24 other process issues from a court of competent jurisdic-
25 tion; or

26 (b) an indemnity bond sufficient in the issuer's judg-
27 ment to protect the issuer and any transfer agent, regis-
28 trar or other agent of the issuer involved, from any loss
29 which it or they may suffer by complying with the ad-
30 verse claim is filed with the issuer.

31 (3) Unless an issuer is charged with notice of an ad-
32 verse claim from a controlling instrument which it has
33 elected to require under subsection (4) of Section 8-402
34 or receives notification of an adverse claim under subsec-
35 tion (1) of this section, where a security presented for
36 registration is indorsed by the appropriate person or per-
37 sons the issuer is under no duty to inquire into adverse
38 claims. In particular

39 (a) an issuer registering a security in the name of a
40 person who is a fiduciary or who is described as a fiduciary
41 is not bound to inquire into the existence, extent, or cor-
42 rect description of the fiduciary relationship and thereaf-
43 ter the issuer may assume without inquiry that the newly
44 registered owner continues to be the fiduciary until the
45 issuer receives written notice that the fiduciary is no
46 longer acting as such with respect to the particular se-
47 curity;

48 (b) an issuer registering transfer on an indorsement
49 by a fiduciary is not bound to inquire whether the trans-
50 fer is made in compliance with a controlling instrument
51 or with the law of the state having jurisdiction of the fi-
52 duciary relationship, including any law requiring the fi-
53 duciary to obtain court approval of the transfer; and

54 (c) the issuer is not charged with notice of the con-
55 tents of any court record or file or other recorded or un-
56 recorded document even though the document is in its
57 possession and even though the transfer is made on the
58 indorsement of a fiduciary to the fiduciary himself or to
59 his nominee.

Sec. 8-404. Liability and Non-Liability for Registra-
2 **tion.**—(1) Except as otherwise provided in any law relat-
3 ing to the collection of taxes, the issuer is not liable to the

- 4 owner or any other person suffering loss as a result of the
5 registration of a transfer of a security if
- 6 (a) there were on or with the security the necessary
7 indorsements (Section 8-308); and
- 8 (b) the issuer had no duty to inquire into adverse
9 claims or has discharged any such duty (Section 8-403).
- 10 (2) Where an issuer has registered a transfer of a se-
11 curity to a person not entitled to it the issuer on demand
12 must deliver a like security to the true owner unless
- 13 (a) the registration was pursuant to subsection (1); or
14 (b) the owner is precluded from asserting any claim
15 for registering the transfer under subsection (1) of the
16 following section; or
- 17 (c) such delivery would result in overissue, in which
18 case the issuer's liability is governed by Section 8-104.

Sec. 8-405. Lost, Destroyed and Stolen Securities.—

- 2 (1) Where a security has been lost, apparently destroyed
3 or wrongfully taken and the owner fails to notify the is-
4 suer of that fact within a reasonable time after he has
5 notice of it and the issuer registers a transfer of the secur-
6 ity before receiving such a notification, the owner is pre-
7 cluded from asserting against the issuer any claim for
8 registering the transfer under the preceding section or any
9 claim to a new security under this section.
- 10 (2) Where the owner of a security claims that the se-
11 curity has been lost, destroyed or wrongfully taken, the is-
12 suer must issue a new security in place of the original
13 security if the owner
- 14 (a) so requests before the issuer has notice that the
15 security has been acquired by a bona fide purchaser; and
- 16 (b) files with the issuer a sufficient indemnity bond;
17 and
- 18 (c) satisfies any other reasonable requirements im-
19 posed by the issuer.
- 20 (3) If, after the issue of the new security, a bona fide
21 purchaser of the original security presents it for registra-
22 tion of transfer, the issuer must register the transfer un-
23 less registration would result in overissue, in which event
24 the issuer's liability is governed by Section 8-104. In ad-
25 dition to any rights on the indemnity bond, the issuer
26 may recover the new security from the person to whom it

27 was issued or any person taking under him except a bona
28 fide purchaser.

**Sec. 8-406. Duty of Authenticating Trustee, Transfer
2 Agent or Registrar.**—(1) Where a person acts as authenti-
3 cating trustee, transfer agent, registrar, or other agent
4 for an issuer in the registration of transfers of its secur-
5 ities or in the issue of new securities or in the cancel-
6 lation of surrendered securities

7 (a) he is under a duty to the issuer to exercise good
8 faith and due diligence in performing his functions; and

9 (b) he has with regard to the particular functions
10 he performs the same obligation to the holder or owner
11 of the security and has the same rights and privileges
12 as the issuer has in regard to those functions.

13 (2) Notice to an authenticating trustee, transfer
14 agent, registrar or other such agent is notice to the issuer
15 with respect to the functions performed by the agent.

Article 9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section 9-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Se-
3 cured Transactions.

Sec. 9-102. Policy and Scope of Article.—(1) Except as
2 otherwise provided in Section 9-103 on multiple state
3 transactions and in Section 9-104 on excluded transac-
4 tions, this article applies so far as concerns any personal
5 property and fixtures within the jurisdiction of this
6 state

7 (a) to any transaction (regardless of its form) which
8 is intended to create a security interest in personal
9 property or fixtures including goods, documents, instru-
10 ments, general intangibles, chattel paper, accounts or
11 contract rights; and also

12 (b) to any sale of accounts, contract rights or chat-
13 tel paper.

14 (2) This article applies to security interests created
15 by contract including pledge, assignment, chattel mort-

16 gage, chattel trust, trust deed, factor's lien, equipment
17 trust, conditional sale, trust receipt, other lien or title
18 retention contract and lease or consignment intended as
19 security. This article does not apply to statutory liens
20 except as provided in Section 9-310.

21 (3) The application of this article to a security inter-
22 est in a secured obligation is not affected by the fact
23 that the obligation is itself secured by a transaction or
24 interest to which this article does not apply.

Sec. 9-103. Accounts, Contract Rights, General Intan-
2 **gibles and Equipment Relating to Another Jurisdiction;**
3 **and Incoming Goods Already Subject to a Security Inter-**
4 **est.—**(1) If the office where the assignor of accounts or
5 contract rights keeps his records concerning them is in
6 this state, the validity and perfection of a security in-
7 terest therein and the possibility and effect of proper
8 filing is governed by this article; otherwise by the law
9 (including the conflict of laws rules) of the jurisdiction
10 where such office is located.

11 (2) If the chief place of business of a debtor is in
12 this state, this article governs the validity and perfec-
13 tion of a security interest and the possibility and effect
14 of proper filing with regard to general intangibles or
15 with regard to goods of a type which are normally used
16 in more than one jurisdiction (such as automotive
17 equipment, rolling stock, airplanes, road building equip-
18 ment, commercial harvesting equipment, construction
19 machinery and the like) if such goods are classified as
20 equipment or classified as inventory by reason of their
21 being leased by the debtor to others. Otherwise, the
22 law (including the conflict of laws rules) of the juris-
23 diction where such chief place of business is located
24 shall govern. If the chief place of business is located
25 in a jurisdiction which does not provide for perfection
26 of the security interest by filing or recording in that
27 jurisdiction, then the security interest may be perfected
28 by filing in this state.

29 (3) If personal property other than that governed
30 by subsections (1) and (2) is already subject to a secur-
31 ity interest when it is brought into this state, the validity
32 of the security interest in this state is to be determined

33 by the law (including the conflict of laws rules) of the
34 jurisdiction where the property was when the security
35 interest attached. However, if the parties to the trans-
36 action understood at the time that the security interest
37 attached that the property would be kept in this state
38 and it was brought into this state within thirty days after
39 the security interest attached for purposes other than
40 transportation through this state, then the validity of
41 the security interest in this state is to be determined
42 by the law of this state. If the security interest was
43 already perfected under the law of the jurisdiction
44 where the property was when the security interest
45 attached and before being brought into this state, the
46 security interest continues perfected in this state for
47 four months and also thereafter if within the four month
48 period it is perfected in this state. The security interest
49 may also be perfected in this state after the expiration
50 of the four month period; in such case perfection dates
51 from the time of perfection in this state. If the security
52 interest was not perfected under the law of the juris-
53 diction where the property was when the security inter-
54 est attached and before being brought into this state,
55 it may be perfected in this state; in such case perfec-
56 tion dates from the time of perfection in this state.

57 (4) Notwithstanding subsections (2) and (3), if per-
58 sonal property is covered by a certificate of title issued
59 under a statute of this state or any other jurisdiction
60 which requires indication on a certificate of title of any
61 security interest in the property as a condition of per-
62 fection, then the perfection is governed by the law of
63 the jurisdiction which issued the certificate.

Sec. 9-104. Transactions Excluded From Article.—This
2 article does not apply

3 (a) to a security interest subject to any statute of
4 the United States such as the Ship Mortgage Act, 1920,
5 to the extent that such statute governs the rights of
6 parties to and third parties affected by transactions in
7 particular types of property; or

8 (b) to a landlord's lien; or

9 (c) to a lien given by statute or other rule of law

10 for services or materials except as provided in Section
11 9-310 on priority of such liens; or

12 (d) to a transfer of a claim for wages, salary or other
13 compensation of an employee; or

14 (e) to an equipment trust covering railway rolling
15 stock; or

16 (f) to a sale of accounts, contract rights or chattel
17 paper as part of a sale of the business out of which they
18 arose, or an assignment of accounts, contract rights or
19 chattel paper which is for the purpose of collection only,
20 or a transfer of a contract right to an assignee who is
21 also to do the performance under the contract; or

22 (g) to a transfer of an interest or claim in or under
23 any policy of insurance; or

24 (h) to a right represented by a judgment; or

25 (i) to any right of set-off; or

26 (j) except to the extent that provision is made for
27 fixtures in Section 9-313, to the creation or transfer of
28 an interest in or lien on real estate, including a lease or
29 rents thereunder; or

30 (k) to a transfer in whole or in part of any of the
31 following: any claim arising out of tort; any deposit,
32 savings, passbook or like account maintained with a
33 bank, savings and loan association, credit union or like
34 organization.

Sec. 9-105. Definitions and Index of Definitions.—(1) In
2 this article unless the context otherwise requires:

3 (a) "Account debtor" means the person who is obli-
4 gated on an account, chattel paper, contract right or gen-
5 eral intangible;

6 (b) "Chattel paper" means a writing or writings which
7 evidence both a monetary obligation and a security inter-
8 est in or a lease of specific goods. When a transaction is
9 evidenced both by such a security agreement or a lease
10 and by an instrument or a series of instruments, the group
11 of writings taken together constitutes chattel paper;

12 (c) "Collateral" means the property subject to a secur-
13 ity interest, and includes accounts, contract rights and
14 chattel paper which have been sold;

15 (d) "Debtor" means the person who owes payment or
16 other performance of the obligation secured, whether or

17 not he owns or has rights in the collateral, and includes
18 the seller of accounts, contract rights or chattel paper.
19 Where the debtor and the owner of the collateral are not
20 the same person, the term "debtor" means the owner of
21 the collateral in any provision of the article dealing with
22 the collateral, the obligor in any provision dealing with
23 the obligation, and may include both where the context
24 so requires;

25 (e) "Document" means document of title as defined in
26 the general definitions of Article 1 (Section 1-201);

27 (f) "Goods" includes all things which are movable at the
28 time the security interest attaches or which are fixtures
29 (Section 9-313), but does not include money, documents,
30 instruments, accounts, chattel paper, general intangibles,
31 contract rights and other things in action. "Goods" also
32 include the unborn young of animals and growing crops;

33 (g) "Instrument" means a negotiable instrument (de-
34 fined in Section 3-104), or a security (defined in Section
35 8-102) or any other writing which evidences a right to the
36 payment of money and is not itself a security agreement
37 or lease and is of a type which is in ordinary course of
38 business transferred by delivery with any necessary in-
39 dorsement or assignment;

40 (h) "Security agreement" means an agreement which
41 creates or provides for a security interest;

42 (i) "Secured party" means a lender, seller or other
43 person in whose favor there is a security interest, includ-
44 ing a person to whom accounts, contract rights or chattel
45 paper have been sold. When the holders of obligations
46 issued under an indenture of trust, equipment trust agree-
47 ment or the like are represented by a trustee or other per-
48 son, the representative is the secured party.

49 (2) Other definitions applying to this article and the
50 sections in which they appear are:

51 "Account".	Section 9-106.
52 "Consumer goods".	Section 9-109(1).
53 "Contract right".	Section 9-106.
54 "Equipment".	Section 9-109(2).
55 "Farm products".	Section 9-109(3).
56 "General intangibles".	Section 9-106.
57 "Inventory".	Section 9-109(4).

58	“Lien creditor”.	Section 9-301 (3).
59	“Proceeds”.	Section 9-306 (1).
60	“Purchase money security	
61	interest”.	Section 9-107.
62	(3) The following definitions in other articles of this	
63	chapter apply to this article:	
64	“Check”.	Section 3-104.
65	“Contract for sale”.	Section 2-106.
66	“Holder in due course”.	Section 3-302.
67	“Note”.	Section 3-104.
68	“Sale”.	Section 2-106.
69	(4) In addition Article 1 of this chapter contains gen-	
70	eral definitions and principles of construction and inter-	
71	pretation applicable throughout this article.	

Sec. 9-106. Definitions: “Account”; “Contract Right”; “General Intangibles”.—“Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. “Contract right” means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. “General intangibles” means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

Sec. 9-107. Definitions: “Purchase Money Security Interest”.—A security interest is a “purchase money security interest” to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Sec. 9-108. When After-Acquired Collateral Not Security for Antecedent Debt.—Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security

8 for an antecedent debt if the debtor acquires his rights in
9 such collateral either in the ordinary course of his busi-
10 ness or under a contract of purchase made pursuant to
11 the security agreement within a reasonable time after
12 new value is given.

**Sec. 9-109. Classification of Goods; "Consumer Goods";
2 "Equipment"; "Farm Products"; "Inventory".—**Goods are

3 (1) "consumer goods" if they are used or bought for
4 use primarily for personal, family or household pur-
5 poses;

6 (2) "equipment" if they are used or bought for use
7 primarily in business (including farming or a profes-
8 sion) or by a debtor who is a non-profit organization or
9 a governmental subdivision or agency or if the goods
10 are not included in the definitions of inventory, farm
11 products or consumer goods;

12 (3) "farm products" if they are crops or livestock or
13 supplies used or produced in farming operations or if
14 they are products of crops or livestock in their unmanu-
15 factured states (such as ginned cotton, wool-clip, maple
16 syrup, milk and eggs), and if they are in the possession
17 of a debtor engaged in raising, fattening, grazing or
18 other farming operations. If goods are farm products
19 they are neither equipment nor inventory;

20 (4) "inventory" if they are held by a person who
21 holds them for sale or lease or to be furnished under
22 contracts of service or if he has so furnished them, or
23 if they are raw materials, work in process or materials
24 used or consumed in a business. Inventory of a person
25 is not to be classified as his equipment.

Sec. 9-110. Sufficiency of Description.—For the pur-
2 poses of this article any description of personal prop-
3 erty or real estate is sufficient whether or not it is
4 specific if it reasonably identifies what is described.

Sec. 9-111. Applicability of Bulk Transfer Laws.—The
2 creation of a security interest is not a bulk transfer
3 under Article 6 (see Section 6-103).

Sec. 9-112. Where Collateral Is Not Owned by Debtor.—
2 Unless otherwise agreed, when a secured party knows
3 that collateral is owned by a person who is not the debt-

4 or, the owner of the collateral is entitled to receive from
 5 the secured party any surplus under Section 9-502 (2)
 6 or under Section 9-504 (1), and is not liable for the debt
 7 or for any deficiency after resale, and he has the same
 8 right as the debtor

9 (a) to receive statements under Section 9-208;

10 (b) to receive notice of and to object to a secured
 11 party's proposal to retain the collateral in satisfaction of
 12 the indebtedness under Section 9-505;

13 (c) to redeem the collateral under Section 9-506;

14 (d) to obtain injunctive or other relief under Sec-
 15 tion 9-507 (1); and

16 (e) to recover losses caused to him under Section
 17 9-208 (2).

Sec. 9-113. Security Interests Arising Under Article on
 2 **Sales.**—A security interest arising solely under the article
 3 on Sales (Article 2) is subject to the provisions of this
 4 article except that to the extent that and so long as the
 5 debtor does not have or does not lawfully obtain pos-
 6 session of the goods

7 (a) no security agreement is necessary to make the
 8 security interest enforceable; and

9 (b) no filing is required to perfect the security in-
 10 terest; and

11 (c) the rights of the secured party on default by
 12 the debtor are governed by the article on Sales (Article
 13 2).

PART 2. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

Sec. 9-201. General Validity of Security Agreement.—
 2 Except as otherwise provided by this chapter a security
 3 agreement is effective according to its terms between the
 4 parties, against purchasers of the collateral and against
 5 creditors. Nothing in this article validates any charge
 6 or practice illegal under any statute or regulation there-
 7 under governing usury, small loans, retail installment
 8 sales, or the like, or extends the application of any such
 9 statute or regulation to any transaction not otherwise
 10 subject thereto.

Sec. 9-202. Title to Collateral Immaterial.—Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Sec. 9-203. Enforceability of Security Interest; Proceeds, Formal Requisites.—(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word “proceeds” is sufficient without further description to cover proceeds of any character.

(2) A transaction may be subject to this article and also to Article 7A of Chapter 47 relating to small loans and in case of conflict between the provisions of this article and said Article 7A or any other such statute, the provisions of said Article 7A or such other statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Sec. 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances.—(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purpose of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

14 (b) in fish until caught, in oil, gas or minerals until
15 they are extracted, in timber until it is cut;

16 (c) in a contract right until the contract has been
17 made;

18 (d) in an account until it comes into existence.

19 (3) Except as provided in subsection (4) a security
20 agreement may provide that collateral, whenever ac-
21 quired, shall secure all obligations covered by the security
22 agreement.

23 (4) No security interest attaches under an after-
24 acquired property clause

25 (a) to crops which become such more than one year
26 after the security agreement is executed except that a
27 security interest in crops which is given in conjunction
28 with a lease or a land purchase or improvement trans-
29 action evidenced by a contract, mortgage or deed of
30 trust may if so agreed attach to crops to be grown on
31 the land concerned during the period of such real es-
32 tate transaction;

33 (b) to consumer goods other than accessions (Sec-
34 tion 9-314) when given as additional security unless the
35 debtor acquires rights in them within ten days after the
36 secured party gives value.

37 (5) Obligations covered by a security agreement
38 may include future advances or other value whether or
39 not the advances or value are given pursuant to com-
40 mitment.

**Sec. 9-205. Use or Disposition of Collateral Without
2 Accounting Permissible.**—A security interest is not in-
3 valid or fraudulent against creditors by reason of liberty
4 in the debtor to use, commingle or dispose of all or part
5 of the collateral (including returned or repossessed goods)
6 or to collect or compromise accounts, contract rights or
7 chattel paper, or to accept the return of goods or make
8 repossessions, or to use, commingle or dispose of proceeds,
9 or by reason of the failure of the secured party to require
10 the debtor to account for proceeds or replace collateral.
11 This section does not relax the requirements of possession
12 where perfection of a security interest depends upon pos-
13 session of the collateral by the secured party or by a
14 bailee.

Sec. 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.—(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Sec. 9-207. Rights and Duties When Collateral Is in Secured Party's Possession.—(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

23 (d) the secured party must keep the collateral identi-
24 fiable but fungible collateral may be commingled;

25 (e) the secured party may repledge the collateral upon
26 terms which do not impair the debtor's right to redeem
27 it.

28 (3) A secured party is liable for any loss caused by his
29 failure to meet any obligation imposed by the preceding
30 subsections but does not lose his security interest.

31 (4) A secured party may use or operate the collateral
32 for the purpose of preserving the collateral or its value
33 or pursuant to the order of a court of appropriate juris-
34 diction or, except in the case of consumer goods, in the
35 manner and to the extent provided in the security agree-
36 ment.

**Sec. 9-208. Request for Statement of Account or List
2 of Collateral.—**(1) A debtor may sign a statement indi-
3 cating what he believes to be the aggregate amount of
4 unpaid indebtedness as of a specified date and may send
5 it to the secured party with a request that the statement
6 be approved or corrected and returned to the debtor.
7 When the security agreement or any other record kept
8 by the secured party identifies the collateral a debtor
9 may similarly request the secured party to approve or
10 correct a list of the collateral.

11 (2) The secured party must comply with such a re-
12 quest within two weeks after receipt by sending a writ-
13 ten correction or approval. If the secured party claims
14 a security interest in all of a particular type of collateral
15 owned by the debtor he may indicate that fact in his
16 reply and need not approve or correct an itemized list
17 of such collateral. If the secured party without reason-
18 able excuse fails to comply he is liable for any loss
19 caused to the debtor thereby; and if the debtor has prop-
20 erly included in his request a good faith statement of
21 the obligation or a list of the collateral or both the se-
22 cured party may claim a security interest only as shown
23 in the statement against persons misled by his failure
24 to comply. If he no longer has an interest in the obliga-
25 tion or collateral at the time the request is received he
26 must disclose the name and address of any successor in
27 interest known to him and he is liable for any loss caused

28 to the debtor as a result of failure to disclose. A suc-
29 cessor in interest is not subject to this section until a
30 request is received by him.

31 (3) A debtor is entitled to such a statement once
32 every six months without charge. The secured party
33 may require payment of a charge not exceeding ten dol-
34 lars for each additional statement furnished.

PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

Sec. 9-301. Persons Who Take Priority Over Unper-
2 **fectured Security Interests; "Lien Creditor".**—(1) Except as
3 otherwise provided in subsection (2), an unperfected
4 security interest is subordinate to the rights of

5 (a) persons entitled to priority under Section 9-312;

6 (b) a person who becomes a lien creditor without
7 knowledge of the security interest and before it is per-
8 fected;

9 (c) in the case of goods, instruments, documents,
10 and chattel paper, a person who is not a secured party
11 and who is a transferee in bulk or other buyer not in
12 ordinary course of business to the extent that he gives
13 value and receives delivery of the collateral without
14 knowledge of the security interest and before it is per-
15 fected;

16 (d) in the case of accounts, contract rights, and gen-
17 eral intangibles, a person who is not a secured party
18 and who is a transferee to the extent that he gives value
19 without knowledge of the security interest and before
20 it is perfected.

21 (2) If the secured party files with respect to a pur-
22 chase money security interest before or within ten days
23 after the collateral comes into possession of the debtor,
24 he takes priority over the rights of a transferee in bulk
25 or of a lien creditor which arise between the time the
26 security interest attaches and the time of filing.

27 (3) A "lien creditor" means a creditor who has ac-
28 quired a lien on the property involved by attachment,
29 levy or the like and includes an assignee for benefit of
30 creditors from the time of assignment, and a trustee in

31 bankruptcy from the date of the filing of the petition
32 or a receiver in equity from the time of appointment.
33 Unless all the creditors represented had knowledge of
34 the security interest such a representative of creditors
35 is a lien creditor without knowledge even though he
36 personally has knowledge of the security interest.

Sec. 9-302. When Filing Is Required to Perfect Security

2 **Interest; Security Interests to Which Filing Provisions of**
3 **This Article Do Not Apply.**—(1) A financing statement
4 must be filed to perfect all security interests except the
5 following:

6 (a) a security interest in collateral in possession of
7 the secured party under Section 9-305;

8 (b) a security interest temporarily perfected in in-
9 struments or documents without delivery under Section
10 9-304 or in proceeds for a ten day period under Section
11 9-306;

12 (c) a purchase money security interest in farm
13 equipment having a purchase price not in excess of \$2500;
14 but filing is required for a fixture under Section 9-313
15 or for a motor vehicle required to be licensed;

16 (d) a purchase money security interest in consumer
17 goods; but filing is required for a fixture under Section
18 9-313 or for a motor vehicle required to be licensed;

19 (e) an assignment of accounts or contract rights
20 which does not alone or in conjunction with other assign-
21 ments to the same assignee transfer a significant part
22 of the outstanding accounts or contract rights of the
23 assignor;

24 (f) a security interest of a collecting bank (Section
25 4-208) or arising under the article on sales (see Section
26 9-113) or covered in subsection (3) of this section.

27 (2) If a secured party assigns a perfected security
28 interest, no filing under this article is required in order
29 to continue the perfected status of the security interest
30 against creditors of and transferees from the original
31 debtor.

32 (3) The filing provisions of this article do not apply
33 to a security interest in property subject to a statute

34 (a) of the United States which provides for a nation-

35 al registration or filing of all security interests in such
36 property; or

37 (b) of this state which provides for central filing of,
38 or which requires indication on a certificate of title of,
39 such security interests in such property.

40 (4) A security interest in property covered by a
41 statute described in subsection (3) can be perfected only
42 by registration or filing under that statute or by indica-
43 tion of the security interest on a certificate of title or a
44 duplicate thereof by a public official.

Sec. 9-303. When Security Interest Is Perfected; Conti-
2 **nuity of Perfection.**—(1) A security interest is perfected
3 when it has attached and when all of the applicable steps
4 required for perfection have been taken. Such steps are
5 specified in Sections 9-302, 9-304, 9-305 and 9-306. If such
6 steps are taken before the security interest attaches, it is
7 perfected at the time when it attaches.

8 (2) If a security interest is originally perfected in any
9 way permitted under this article and is subsequently per-
10 fected in some other way under this article, without an
11 intermediate period when it was unperfected, the security
12 interest shall be deemed to be perfected continuously for
13 the purposes of this article.

Sec. 9-304. Perfection of Security Interest in Instru-
2 **ments, Documents, and Goods Covered by Documents;**
3 **Perfection by Permissive Filing; Temporary Perfection**
4 **Without Filing or Transfer of Possession.**—(1) A security
5 interest in chattel paper or negotiable documents may be
6 perfected by filing. A security interest in instruments
7 (other than instruments which constitute part of chattel
8 paper) can be perfected only by the secured party's tak-
9 ing possession, except as provided in subsections (4) and
10 (5).

11 (2) During the period that goods are in the possession
12 of the issuer of a negotiable document therefor, a security
13 interest in the goods is perfected by perfecting a security
14 interest in the document, and any security interest in the
15 goods otherwise perfected during such period is subject
16 thereto.

17 (3) A security interest in goods in the possession of a

18 bailee other than one who has issued a negotiable docu-
19 ment therefor is perfected by issuance of a document in
20 the name of the secured party or by the bailee's receipt
21 of notification of the secured party's interest or by filing
22 as to the goods.

23 (4) A security interest in instruments or negotiable
24 documents is perfected without filing or the taking of pos-
25 session for a period of 21 days from the time it attaches
26 to the extent that it arises for new value given under a
27 written security agreement.

28 (5) A security interest remains perfected for a period
29 of 21 days without filing where a secured party having a
30 perfected security interest in an instrument, a negotiable
31 document or goods in possession of a bailee other than one
32 who has issued a negotiable document therefor

33 (a) makes available to the debtor the goods or docu-
34 ments representing the goods for the purpose of ultimate
35 sale or exchange or for the purpose of loading, unloading,
36 storing, shipping, transshipping, manufacturing, process-
37 ing or otherwise dealing with them in a manner prelimi-
38 nary to their sale or exchange; or

39 (b) delivers the instrument to the debtor for the pur-
40 pose of ultimate sale or exchange or of presentation, col-
41 lection, renewal or registration of transfer.

42 (6) After the 21 day period in subsections (4) and (5)
43 perfection depends upon compliance with applicable pro-
44 visions of this article.

Sec. 9-305. When Possession by Secured Party Perfects
2 **Security Interest Without Filing.**—A security interest in
3 letters of credit and advices of credit (subsection (2)
4 (a) of Section 5-116), goods, instruments, negotiable
5 documents or chattel paper may be perfected by the se-
6 cured party's taking possession of the collateral. If such
7 collateral other than goods covered by a negotiable doc-
8 ument is held by a bailee, the secured party is deemed
9 to have possession from the time the bailee receives
10 notification of the secured party's interest. A security
11 interest is perfected by possession from the time pos-
12 session is taken without relation back and continues only
13 so long as possession is retained, unless otherwise speci-
14 fied in this article. The security interest may be other-

15 wise perfected as provided in this article before or after
16 the period of possession by the secured party.

Sec. 9-306. "Proceeds"; Secured Party's Rights on Dis-
2 **position of Collateral.**—(1) "Proceeds" includes whatever
3 is received when collateral or proceeds is sold, exchanged,
4 collected or otherwise disposed of. The term also in-
5 cludes the account arising when the right to payment is
6 earned under a contract right. Money, checks and the
7 like are "cash proceeds". All other proceeds are "non-
8 cash proceeds".

9 (2) Except where this article otherwise provides,
10 a security interest continues in collateral notwithstand-
11 ing sale, exchange or other disposition thereof by the
12 debtor unless his action was authorized by the secured
13 party in the security agreement or otherwise, and also
14 continues in any identifiable proceeds including collec-
15 tions received by the debtor.

16 (3) The security interest in proceeds is a continuous-
17 ly perfected security interest if the interest in the origi-
18 nal collateral was perfected but it ceases to be a perfected
19 security interest and becomes unperfected ten days after
20 receipt of the proceeds by the debtor unless

21 (a) a filed financing statement covering the original
22 collateral also covers proceeds; or

23 (b) the security interest in the proceeds is perfected
24 before the expiration of the ten day period.

25 (4) In the event of insolvency proceedings instituted
26 by or against a debtor, a secured party with a perfected
27 security interest in proceeds has a perfected security
28 interest

29 (a) in identifiable non-cash proceeds;

30 (b) in identifiable cash proceeds in the form of money
31 which is not commingled with other money or deposited
32 in a bank account prior to the insolvency proceedings;

33 (c) in identifiable cash proceeds in the form of checks
34 and the like which are not deposited in a bank account
35 prior to the insolvency proceedings; and

36 (d) in all cash and bank accounts of the debtor, if
37 other cash proceeds have been commingled or deposited
38 in a bank account, but the perfected security interest
39 under this paragraph (d) is

40 (i) subject to any right of set-off; and
41 (ii) limited to an amount not greater than the
42 amount of any cash proceeds received by the debtor
43 within ten days before the institution of the insolvency
44 proceedings and commingled or deposited in a bank
45 account prior to the insolvency proceedings less the
46 amount of cash proceeds received by the debtor and paid
47 over to the secured party during the ten day period.

48 (5) If a sale of goods results in an account or chattel
49 paper which is transferred by the seller to a secured
50 party, and if the goods are returned to or are repossessed
51 by the seller or the secured party, the following rules
52 determine priorities:

53 (a) If the goods were collateral at the time of sale
54 for an indebtedness of the seller which is still unpaid,
55 the original security interest attaches again to the goods
56 and continues as a perfected security interest if it was
57 perfected at the time when the goods were sold. If the
58 security interest was originally perfected by a filing
59 which is still effective, nothing further is required to
60 continue the perfected status; in any other case, the se-
61 cured party must take possession of the returned or
62 repossessed goods or must file.

63 (b) An unpaid transferee of the chattel paper has
64 a security interest in the goods against the transferor.
65 Such security interest is prior to a security interest
66 asserted under paragraph (a) to the extent that the
67 transferee of the chattel paper was entitled to priority
68 under Section 9-308.

69 (c) An unpaid transferee of the account has a security
70 interest in the goods against the transferor. Such secu-
71 rity interest is subordinate to a security interest asserted
72 under paragraph (a).

73 (d) A security interest of an unpaid transferee as-
74 serted under paragraph (b) or (c) must be perfected
75 for protection against creditors of the transferor and
76 purchasers of the returned or repossessed goods.

Sec. 9-307. Protection of Buyers of Goods.—(1) A buyer
2 in ordinary course of business (subsection (9) of Section
3 1-201) other than a person buying farm products from a
4 person engaged in farming operations takes free of a se-

5 curity interest created by his seller even though the secu-
6 rity interest is perfected and even though the buyer
7 knows of its existence.

8 (2) In the case of consumer goods and in the case of
9 farm equipment having an original purchase price not in
10 excess of \$2500 (other than fixtures, see Section 9-313), a
11 buyer takes free of a security interest even though per-
12 fected if he buys without knowledge of the security in-
13 terest, for value and for his own personal, family or house-
14 hold purposes or his own farming operations unless prior
15 to the purchase the secured party has filed a financing
16 statement covering such goods.

Sec. 9-308. Purchase of Chattel Paper and Non-Nego-
2 **tiable Instruments.**—A purchaser of chattel paper or a
3 non-negotiable instrument who gives new value and takes
4 possession of it in the ordinary course of his business and
5 without knowledge that the specific paper or instrument
6 is subject to a security interest has priority over a secu-
7 rity interest which is perfected under Section 9-304 (per-
8 missive filing and temporary perfection). A purchaser
9 of chattel paper who gives new value and takes possession
10 of it in the ordinary course of his business has priority
11 over a security interest in chattel paper which is claimed
12 merely as proceeds of inventory subject to a security in-
13 terest (Section 9-306), even though he knows that the
14 specific paper is subject to the security interest.

Sec. 9-309. Protection of Purchasers of Instruments and
2 **Documents.**—Nothing in this article limits the rights of a
3 holder in due course of a negotiable instrument (Section
4 3-302) or a holder to whom a negotiable document of title
5 has been duly negotiated (Section 7-501) or a bona fide
6 purchaser of a security (Section 8-301) and such holders
7 or purchasers take priority over an earlier security inter-
8 est even though perfected. Filing under this article does
9 not constitute notice of the security interest to such hold-
10 ers or purchasers.

Sec. 9-310. Priority of Certain Liens Arising by Oper-
2 **ation of Law.**—When a person in the ordinary course of
3 his business furnishes services or materials with respect
4 to goods subject to a security interest, a lien upon goods

5 in the possession of such person given by statute or rule
6 of law for such materials or services takes priority over
7 a perfected security interest unless the lien is statutory
8 and the statute expressly provides otherwise.

Sec. 9-311. Alienability of Debtor's Rights: Judicial
2 **Process.**—The debtor's rights in collateral may be volun-
3 tarily or involuntarily transferred (by way of sale, crea-
4 tion of a security interest, attachment, levy, garnishment
5 or other judicial process) notwithstanding a provision in
6 the security agreement prohibiting any transfer or mak-
7 ing the transfer constitute a default.

Sec. 9-312. Priorities Among Conflicting Security Inter-
2 **ests in the Same Collateral.**—(1) The rules of priority
3 stated in the following sections shall govern where applic-
4 able: Section 4-208 with respect to the security interest of
5 collecting banks in items being collected, accompanying
6 documents and proceeds; Section 9-301 on certain prior-
7 ities; Section 9-304 on goods covered by documents; Sec-
8 tion 9-306 on proceeds and repossessions; Section 9-307 on
9 buyers of goods; Section 9-308 on possessory against non-
10 possessory interests in chattel paper or non-negotiable in-
11 struments; Section 9-309 on security interests in negoti-
12 able instruments, documents or securities; Section 9-310
13 on priorities between perfected security interests and liens
14 by operation of law; Section 9-313 on security interests
15 in fixtures as against interests in real estate; Section 9-
16 314 on security interests in accessions as against interest
17 in goods; Section 9-315 on conflicting security interests
18 where goods lose their identity or become part of a pro-
19 duct; and Section 9-316 on contractual subordination.

20 (2) A perfected security interest in crops for new
21 value given to enable the debtor to produce the crops dur-
22 ing the production season and given not more than three
23 months before the crops become growing crops by plant-
24 ing or otherwise takes priority over an earlier perfected
25 security interest to the extent that such earlier interest
26 secures obligations due more than six months before the
27 crops become growing crops by planting or otherwise,
28 even though the person giving new value had knowledge
29 of the earlier security interest.

30 (3) A purchase money security interest in inventory
31 collateral has priority over a conflicting security interest
32 in the same collateral if

33 (a) the purchase money security interest is perfected
34 at the time the debtor receives possession of the collat-
35 eral; and

36 (b) any secured party whose security interest is
37 known to the holder of the purchase money security in-
38 terest or who, prior to the date of the filing made by the
39 holder of the purchase money security interest, had filed
40 a financing statement covering the same items or type of
41 inventory, has received notification of the purchase money
42 security interest before the debtor receives possession of
43 the collateral covered by the purchase money security
44 interest; and

45 (c) such notification states that the person giving the
46 notice has or expects to acquire a purchase money secur-
47 ity interest in inventory of the debtor, describing such in-
48 ventory by item or type.

49 (4) A purchase money security interest in collateral
50 other than inventory has priority over a conflicting secu-
51 rity interest in the same collateral if the purchase money
52 security interest is perfected at the time the debtor re-
53 ceives possession of the collateral or within ten days there-
54 after.

55 (5) In all cases not governed by other rules stated in
56 this section (including cases of purchase money security
57 interests which do not qualify for the special priorities set
58 forth in subsections (3) and (4) of this section), priority
59 between conflicting security interests in the same collat-
60 eral shall be determined as follows:

61 (a) in the order of filing if both are perfected by filing,
62 regardless of which security interest attached first under
63 Section 9-204(1) and whether it attached before or after
64 filing;

65 (b) in the order of perfection unless both are per-
66 fected by filing, regardless of which security interest at-
67 tached first under Section 9-204(1) and, in the case of a
68 filed security interest, whether it attached before or after
69 filing; and

70 (c) in the order of attachment under Section 9-204 (1)
71 so long as neither is perfected.

72 (6) For the purpose of the priority rules of the im-
73 mediately preceding subsection, a continuously perfected
74 security interest shall be treated at all times as if per-
75 fected by filing if it was originally so perfected and it shall
76 be treated at all times as if perfected otherwise than by
77 filing if it was originally perfected otherwise than by fil-
78 ing.

Sec. 9-313. Priority of Security Interests in Fixtures.—

2 (1) The rules of this section do not apply to goods incor-
3 porated into a structure in the manner of lumber, bricks,
4 tile, cement, glass, metal work and the like and no secu-
5 rity interest in them exists under this article unless the
6 structure remains personal property under applicable law.
7 The law of this state other than this chapter determines
8 whether and when other goods become fixtures. This
9 article does not prevent creation of an encumbrance upon
10 fixtures or real estate pursuant to the law applicable to
11 real estate.

12 (2) A security interest which attaches to goods before
13 they become fixtures takes priority as to the goods over
14 the claims of all persons who have an interest in the real
15 estate except as stated in subsection (4).

16 (3) A security interest which attaches to goods after
17 they become fixtures is valid against all persons subse-
18 quently acquiring interests in the real estate except as
19 stated in subsection (4) but is invalid against any person
20 with an interest in the real estate at the time the security
21 interest attaches to the goods who has not in writing con-
22 sented to the security interest or disclaimed an interest in
23 the goods as fixtures.

24 (4) The security interests described in subsections (2)
25 and (3) do not take priority over

26 (a) a subsequent purchaser for value of any interest
27 in the real estate; or

28 (b) a creditor with a lien on the real estate subse-
29 quently obtained by judicial proceedings; or

30 (c) a creditor with a prior encumbrance of record on
31 the real estate to the extent that he makes subsequent
32 advances

33 if the subsequent purchase is made, the lien by judicial
34 proceedings is obtained, or the subsequent advance under
35 the prior encumbrance is made or contracted for without
36 knowledge of the security interest and before it is per-
37 fected. A purchaser of the real estate at a foreclosure
38 sale other than an encumbrancer purchasing at his own
39 foreclosure sale is a subsequent purchaser within this
40 section.

41 (5) When under subsections (2) or (3) and (4) a se-
42 cured party has priority over the claims of all persons who
43 have interests in the real estate, he may, on default, sub-
44 ject to the provisions of Part 5, remove his collateral from
45 the real estate but he must reimburse any encumbrancer
46 or owner of the real estate who is not the debtor and who
47 has not otherwise agreed for the cost of repair of any
48 physical injury, but not for any diminution in value of the
49 real estate caused by the absence of the goods removed or
50 by any necessity for replacing them. A person entitled
51 to reimbursement may refuse permission to remove until
52 the secured party gives adequate security for the per-
53 formance of this obligation.

Sec. 9-314. Accessions.—(1) A security interest in goods
2 which attaches before they are installed in or affixed to
3 other goods takes priority as to the goods installed or af-
4 fixed (called in this section “accessions”) over the claims
5 of all persons to the whole except as stated in subsection
6 (3) and subject to Section 9-315(1).

7 (2) A security interest which attaches to goods after
8 they become part of a whole is valid against all persons
9 subsequently acquiring interests in the whole except as
10 stated in subsection (3) but is invalid against any person
11 with an interest in the whole at the time the security in-
12 terest attaches to the goods who has not in writing con-
13 sented to the security interest or disclaimed an interest in
14 the goods as part of the whole.

15 (3) The security interests described in subsections (1)
16 and (2) do not take priority over

17 (a) a subsequent purchaser for value of any interest in
18 the whole; or

19 (b) a creditor with a lien on the whole subsequently
20 obtained by judicial proceedings; or

21 (c) a creditor with a prior perfected security interest
22 in the whole to the extent that he makes subsequent ad-
23 vances
24 if the subsequent purchase is made, the lien by judicial
25 proceedings obtained or the subsequent advance under
26 the prior perfected security interest is made or contracted
27 for without knowledge of the security interest and before
28 it is perfected. A purchaser of the whole at a foreclosure
29 sale other than the holder of a perfected security interest
30 purchasing at his own foreclosure sale is a subsequent
31 purchaser within this section.

32 (4) When under subsections (1) or (2) and (3) a se-
33 cured party has an interest in accessions which has prior-
34 ity over the claims of all persons who have interests in
35 the whole, he may on default subject to the provisions of
36 Part 5 remove his collateral from the whole but he must
37 reimburse any encumbrancer or owner of the whole who
38 is not the debtor and who has not otherwise agreed for the
39 cost of repair of any physical injury but not for any di-
40 minution in value of the whole caused by the absence of
41 the goods removed or by any necessity for replacing them.
42 A person entitled to reimbursement may refuse permis-
43 sion to remove until the secured party gives adequate se-
44 curity for the performance of this obligation.

Sec. 9-315. Priority When Goods Are Commingled or
2 **Processed.**—(1) If a security interest in goods was per-
3 fected and subsequently the goods or a part thereof have
4 become part of a product or mass, the security interest
5 continues in the product or mass if

6 (a) the goods are so manufactured, processed, assem-
7 bled or commingled that their identity is lost in the pro-
8 duct or mass; or

9 (b) a financing statement covering the original goods
10 also covers the product into which the goods have been
11 manufactured, processed or assembled.

12 In a case to which paragraph (b) applies, no separate se-
13 curity interest in that part of the original goods which has
14 been manufactured, processed or assembled into the pro-
15 duct may be claimed under Section 9-314.

16 (2) When under subsection (1) more than one secu-
17 rity interest attaches to the product or mass, they rank

18 equally according to the ratio that the cost of the goods
19 to which each interest originally attached bears to the
20 cost of the total product or mass.

Sec. 9-316. Priority Subject to Subordination.—Nothing
2 in this article prevents subordination by agreement by
3 any person entitled to priority.

Sec. 9-317. Secured Party Not Obligated on Contract of
2 **Debtor.**—The mere existence of a security interest or
3 authority given to the debtor to dispose of or use collat-
4 eral does not impose contract or tort liability upon the
5 secured party for the debtor's acts or omissions.

Sec. 9-318. Defenses Against Assignee; Modification of
2 **Contract After Notification of Assignment; Term Pro-**
3 **hibiting Assignment Ineffective; Identification and Proof**
4 **of Assignment.**—(1) Unless an account debtor has made
5 an enforceable agreement not to assert defenses or claims
6 arising out of a sale as provided in Section 9-206 the rights
7 of an assignee are subject to

8 (a) all the terms of the contract between the account
9 debtor and assignor and any defense or claim arising
10 therefrom; and

11 (b) any other defense or claim of the account debtor
12 against the assignor which accrues before the account
13 debtor receives notification of the assignment.

14 (2) So far as the right to payment under an assigned
15 contract right has not already become an account, and
16 notwithstanding notification of the assignment, any modi-
17 fication of or substitution for the contract made in good
18 faith and in accordance with reasonable commercial stand-
19 ards is effective against an assignee unless the account
20 debtor has otherwise agreed but the assignee acquires
21 corresponding rights under the modified or substituted
22 contract. The assignment may provide that such modifi-
23 cation or substitution is a breach by the assignor.

24 (3) The account debtor is authorized to pay the as-
25 signor until the account debtor receives notification that
26 the account has been assigned and that payment is to be
27 made to the assignee. A notification which does not rea-
28 sonably identify the rights assigned is ineffective. If re-
29 quested by the account debtor, the assignee must season-

30 ably furnish reasonable proof that the assignment has
31 been made and unless he does so the account debtor may
32 pay the assignor.

33 (4) A term in any contract between an account debtor
34 and an assignor which prohibits assignment of an account
35 or contract right to which they are parties is ineffective.

PART 4. FILING

**Sec. 9-401. Place of Filing; Erroneous Filing; Removal
2 of Collateral.**—(1) The proper place to file in order to
3 perfect a security interest is as follows:

4 (a) when the collateral is equipment used in farm-
5 ing operations, or farm products, or accounts, contract
6 rights or general intangibles arising from or relating
7 to the sale of farm products by a farmer, or consumer
8 goods, then in the office of the county clerk in the county
9 of the debtor's residence or if the debtor is not a resi-
10 dent of this state then in the office of the county clerk
11 in the county where the goods are kept, and in addition
12 when the collateral is crops in the office of the county
13 clerk in the county where the land on which the crops
14 are growing or to be grown is located;

15 (b) when the collateral is goods which at the time
16 the security interest attaches are or are to become fix-
17 tures, then in the office where a mortgage on the real
18 estate concerned would be filed or recorded;

19 (c) in all other cases, in the office of the secretary
20 of state and in addition, if the debtor has a place of
21 business in only one county of this state, also in the
22 office of the county clerk of such county, or, if the debtor
23 has no place of business in this state, but resides in the
24 state, also in the office of the county clerk of the county
25 in which he resides.

26 (2) A filing which is made in good faith in an im-
27 proper place or not in all of the places required by this
28 section is nevertheless effective with regard to any col-
29 lateral as to which the filing complied with the require-
30 ments of this article and is also effective with regard to
31 collateral covered by the financing statement against
32 any person who has knowledge of the contents of such
33 financing statement.

34 (3) A filing which is made in the proper county con-
35 tinues effective for four months after a change to an-
36 other county of the debtor's residence or place of busi-
37 ness or the location of the collateral, whichever con-
38 trolled the original filing. It becomes ineffective there-
39 after unless a copy of the financing statement signed by
40 the secured party is filed in the new county within said
41 period. The security interest may also be perfected in
42 the new county after the expiration of the four-month
43 period; in such case perfection dates from the time of
44 perfection in the new county. A change in the use of
45 the collateral does not impair the effectiveness of the
46 original filing.

47 (4) If collateral is brought into this state from an-
48 other jurisdiction, the rules stated in Section 9-103 de-
49 termine whether filing is necessary in this state.

Sec. 9-402. Formal Requisites of Financing Statement;
2 **Amendments.**—(1) A financing statement is sufficient if
3 it is signed by the debtor and the secured party, gives
4 an address of the secured party from which information
5 concerning the security interest may be obtained, gives
6 a mailing address of the debtor and contains a state-
7 ment indicating the types, or describing the items, of
8 collateral. A financing statement may be filed before a
9 security agreement is made or a security interest other-
10 wise attaches. When the financing statement covers
11 crops growing or to be grown or goods which are or are
12 to become fixtures, the statement must also contain a
13 description of the real estate concerned. A copy of the
14 security agreement is sufficient as a financing statement
15 if it contains the above information and is signed by
16 both parties.

17 (2) A financing statement which otherwise complies
18 with subsection (1) is sufficient although it is signed
19 only by the secured party when it is filed to perfect a
20 security interest in

21 (a) collateral already subject to a security interest
22 in another jurisdiction when it is brought into this state.
23 Such a financing statement must state that the collateral
24 was brought into this state under such circumstances.

25 (b) proceeds under Section 9-306 if the security in-

26 terest in the original collateral was perfected. Such a
27 financing statement must describe the original collateral.

28 (3) A form substantially as follows is sufficient to
29 comply with subsection (1):

30 Name of debtor (or assignor)

31 Address

32 Name of secured party (or assignee)

33 Address

34 1. This financing statement covers the following types
35 (or items) of property:

36 (Describe)

37 2. (If collateral is crops) The above described crops
38 are growing or are to be grown on:

39 (Describe Real Estate)

40 3. (If collateral is goods which are or are to become
41 fixtures) The above described goods are affixed or to be
42 affixed to:

43 (Describe Real Estate)

44 4. (If proceeds or products of collateral are claimed)
45 Proceeds—Products of the collateral are also covered.

46 Signature of Debtor (or Assignor)

47 Signature of Secured Party (or Assignee)

48 (4) The term "financing statement" as used in this
49 article means the original financing statement and any
50 amendments but if any amendment adds collateral, it
51 is effective as to the added collateral only from the filing
52 date of the amendment.

53 (5) A financing statement substantially complying
54 with the requirements of this section is effective even
55 though it contains minor errors which are not seriously
56 misleading.

Sec. 9-403. What Constitutes Filing; Duration of Filing;

2 **Effect of Lapsed Filing; Duties of Filing Officer.**—(1) Pre-
3 sentation for filing of a financing statement and tender
4 of the filing fee or acceptance of the statement by the
5 filing officer constitutes filing under this article.

6 (2) A filed financing statement which states a matur-
7 ity date of the obligation secured of five years or less is
8 effective until such maturity date and thereafter for a
9 period of sixty days. Any other filed financing state-
10 ment is effective for a period of five years from the date

11 of filing. The effectiveness of a filed financing state-
12 ment lapses on the expiration of such sixty day period
13 after a stated maturity date or on the expiration of such
14 five year period, as the case may be, unless a continu-
15 ation statement is filed prior to the lapse. Upon such
16 lapse the security interest becomes unperfected. A filed
17 financing statement which states that the obligation se-
18 cured is payable on demand is effective for five years
19 from the date of filing.

20 (3) A continuation statement may be filed by the
21 secured party (i) within six months before and sixty
22 days after a stated maturity date of five years or less,
23 and (ii) otherwise within six months prior to the ex-
24 piration of the five year period specified in subsection
25 (2). Any such continuation statement must be signed
26 by the secured party, identify the original statement by
27 file number and state that the original statement is still
28 effective. Upon timely filing of the continuation state-
29 ment, the effectiveness of the original statement is con-
30 tinued for five years after the last date to which the filing
31 was effective whereupon it lapses in the same manner
32 as provided in subsection (2) unless another continu-
33 ation statement is filed prior to such lapse. Succeeding
34 continuation statements may be filed in the same man-
35 ner to continue the effectiveness of the original state-
36 ment. Unless a statute on disposition of public records
37 provides otherwise, the filing officer may remove a lapsed
38 statement from the files and destroy it.

39 (4) A filing officer shall mark each statement with a
40 consecutive file number and with the date and hour of
41 filing and shall hold the statement for public inspection.
42 In addition the filing officer shall index the statements
43 according to the name of the debtor and shall note in the
44 index the file number and the address of the debtor
45 given in the statement.

46 (5) The uniform fee for filing, indexing and furnish-
47 ing filing data for an original or a continuation state-
48 ment shall be \$1.00.

Sec. 9-404. Termination Statement.—(1) Whenever
2 there is no outstanding secured obligation and no com-
3 mitment to make advances, incur obligations or other-

4 wise give value, the secured party must on written de-
5 mand by the debtor send the debtor a statement that he
6 no longer claims a security interest under the financing
7 statement, which shall be identified by file number. A
8 termination statement signed by a person other than
9 the secured party of record must include or be accom-
10 panied by the assignment or a statement by the secured
11 party of record that he has assigned the security interest
12 to the signer of the termination statement. The uni-
13 form fee for filing and indexing such an assignment or
14 statement thereof shall be \$1.00. If the affected secured
15 party fails to send such a termination statement within
16 ten days after proper demand therefor he shall be liable
17 to the debtor for one hundred dollars, and in addition
18 for any loss caused to the debtor by such failure.

19 (2) On presentation to the filing officer of such a
20 termination statement he must note it in the index. The
21 filing officer shall remove from the files, mark "ter-
22 minated" and send or deliver to the secured party the
23 financing statement and any continuation statement,
24 statement of assignment or statement of release per-
25 taining thereto.

26 (3) The uniform fee for filing and indexing a ter-
27 mination statement including sending or delivering the
28 financing statement shall be \$1.00.

Sec. 9-405. Assignment of Security Interest; Duties of
2 **Filing Officer; Fees.**—(1) A financing statement may dis-
3 close an assignment of a security interest in the collateral
4 described in the statement by indication in the statement
5 of the name and address of the assignee or by an assign-
6 ment itself or a copy thereof on the face or back of the
7 statement. Either the original secured party or the as-
8 signee may sign this statement as the secured party. On
9 presentation to the filing officer of such a financing state-
10 ment the filing officer shall mark the same as provided in
11 Section 9-403(4). The uniform fee for filing, indexing
12 and furnishing filing data for a financing statement so in-
13 dicating an assignment shall be \$1.00.

14 (2) A secured party may assign of record all or a part
15 of his rights under a financing statement by the filing of
16 a separate written statement of assignment signed by the

17 secured party of record and setting forth the name of the
18 secured party of record and the debtor, the file number
19 and the date of filing of the financing statement and the
20 name and address of the assignee and containing a de-
21 scription of the collateral assigned. A copy of the as-
22 signment is sufficient as a separate statement if it com-
23 plies with the preceding sentence. On presentation to the
24 filing officer of such a separate statement, the filing officer
25 shall mark such separate statement with the date and
26 hour of the filing. He shall note the assignment on the
27 index of the financing statement. The uniform fee for
28 filing, indexing and furnishing filing data about such a
29 separate statement of assignment shall be \$1.00.

30 (3) After the disclosure or filing of an assignment un-
31 der this section, the assignee is the secured party of rec-
32 ord.

Sec. 9-406. Release of Collateral; Duties of Filing Officer;
2 **Fees.**—A secured party of record may by his signed state-
3 ment release all or a part of any collateral described in a
4 filed financing statement. The statement of release is suf-
5 ficient if it contains a description of the collateral being
6 released, the name and address of the debtor, the name
7 and address of the secured party, and the file number of
8 the financing statement. Upon presentation of such a
9 statement to the filing officer he shall mark the statement
10 with the hour and date of filing and shall note the same
11 upon the margin of the index of the filing of the financing
12 statement. The uniform fee for filing and noting such a
13 statement of release shall be \$1.00.

PART 5. DEFAULT

Sec. 9-501. Default; Procedure When Security Agree-
2 **ment Covers Both Real and Personal Property.**—(1) When
3 a debtor is in default under a security agreement, a se-
4 cured party has the rights and remedies provided in this
5 part and except as limited by subsection (3) those pro-
6 vided in the security agreement. He may reduce his
7 claim to judgment, foreclose or otherwise enforce the se-
8 curity interest by any available judicial procedure. If
9 the collateral is documents the secured party may pro-
10 ceed either as to the documents or as to the goods covered

11 thereby. A secured party in possession has the rights,
12 remedies and duties provided in Section 9-207. The rights
13 and remedies referred to in this subsection are cumula-
14 tive.

15 (2) After default, the debtor has the rights and rem-
16 edies provided in this part, those provided in the security
17 agreement and those provided in Section 9-207.

18 (3) To the extent that they give rights to the debtor
19 and impose duties on the secured party, the rules stated
20 in the subsections referred to below may not be waived
21 or varied except as provided with respect to compulsory
22 disposition of collateral (subsection (1) of Section 9-505)
23 and with respect to redemption of collateral (Section 9-
24 506) but the parties may by agreement determine the
25 standards by which the fulfillment of these rights and
26 duties is to be measured if such standards are not mani-
27 festly unreasonable:

28 (a) subsection (2) of Section 9-502 and subsection (2)
29 of Section 9-504 insofar as they require accounting for
30 surplus proceeds of collateral;

31 (b) subsection (3) of Section 9-504 and subsection (1)
32 of Section 9-505 which deal with disposition of collateral;

33 (c) subsection (2) of Section 9-505 which deals with
34 acceptance of collateral as discharge of obligation;

35 (d) Section 9-506 which deals with redemption of col-
36 lateral; and

37 (e) subsection (1) of Section 9-507 which deals with
38 the secured party's liability for failure to comply with this
39 part.

40 (4) If the security agreement covers both real and
41 personal property, the secured party may proceed under
42 this part as to the personal property or he may proceed as
43 to both the real and the personal property in accordance
44 with his rights and remedies in respect of the real prop-
45 erty in which case the provisions of this part do not apply.

46 (5) When a secured party has reduced his claim to
47 judgment the lien of any levy which may be made upon
48 his collateral by virtue of any execution based upon the
49 judgment shall relate back to the date of the perfection
50 of the security interest in such collateral. A judicial sale,
51 pursuant to such execution, is a foreclosure of the security

52 interest by judicial procedure within the meaning of this
53 section, and the secured party may purchase at the sale
54 and thereafter hold the collateral free of any other re-
55 quirements of this article.

Sec. 9-502. Collection Rights of Secured Party.—(1)

2 When so agreed and in any event on default the secured
3 party is entitled to notify an account debtor or the
4 obligor on an instrument to make payment to him
5 whether or not the assignor was theretofore making
6 collections on the collateral, and also to take control of
7 any proceeds to which he is entitled under Section 9-306.

8 (2) A secured party who by agreement is entitled
9 to charge back uncollected collateral or otherwise to full
10 or limited recourse against the debtor and who under-
11 takes to collect from the account debtors or obligors
12 must proceed in a commercially reasonable manner and
13 may deduct his reasonable expenses of realization from
14 the collections. If the security agreement secures an
15 indebtedness, the secured party must account to the
16 debtor for any surplus, and unless otherwise agreed, the
17 debtor is liable for any deficiency. But, if the under-
18 lying transaction was a sale of accounts, contract rights,
19 or chattel paper, the debtor is entitled to any surplus
20 or is liable for any deficiency only if the security agree-
21 ment so provides.

Sec. 9-503. Secured Party's Right to Take Possession

2 **After Default.**—Unless otherwise agreed a secured party
3 has on default the right to take possession of the col-
4 lateral. In taking possession a secured party may pro-
5 ceed without judicial process if this can be done without
6 breach of the peace or may proceed by action. If the
7 security agreement so provides the secured party may
8 require the debtor to assemble the collateral and make
9 it available to the secured party at a place to be desig-
10 nated by the secured party which is reasonably con-
11 venient to both parties. Without removal a secured
12 party may render equipment unusable, and may dispose
13 of collateral on the debtor's premises under Section 9-504.

**Sec. 9-504. Secured Party's Right to Dispose of Collat-
2 eral After Default; Effect of Disposition.—(1)** A secured

3 party after default may sell, lease or otherwise dispose
4 of any or all of the collateral in its then condition or
5 following any commercially reasonable preparation or
6 processing. Any sale of goods is subject to the Article
7 on Sales (Article 2). The proceeds of disposition shall
8 be applied in the order following to

9 (a) the reasonable expenses of retaking, holding,
10 preparing for sale, selling and the like and, to the extent
11 provided for in the agreement and not prohibited by law,
12 the reasonable attorneys' fees and legal expenses in-
13 curred by the secured party;

14 (b) the satisfaction of indebtedness secured by the
15 security interest under which the disposition is made;

16 (c) the satisfaction of indebtedness secured by any
17 subordinate security interest in the collateral if written
18 notification of demand therefor is received before dis-
19 tribution of the proceeds is completed. If requested by
20 the secured party, the holder of a subordinate security
21 interest must seasonably furnish reasonable proof of
22 his interest, and unless he does so, the secured party
23 need not comply with his demand.

24 (2) If the security interest secures an indebtedness,
25 the secured party must account to the debtor for any
26 surplus, and, unless otherwise agreed, the debtor is liable
27 for any deficiency. But if the underlying transaction was
28 a sale of accounts, contract rights, or chattel paper, the
29 debtor is entitled to any surplus or is liable for any
30 deficiency only if the security agreement so provides.

31 (3) Disposition of the collateral may be by public or
32 private proceedings and may be made by way of one or
33 more contracts. Sale or other disposition may be as a
34 unit or in parcels and at any time and place and on any
35 terms but every aspect of the disposition including the
36 method, manner, time, place and terms must be com-
37 mercially reasonable. Unless collateral is perishable or
38 threatens to decline speedily in value or is of a type
39 customarily sold on a recognized market, reasonable
40 notification of the time and place of any public sale or
41 reasonable notification of the time after which any pri-
42 vate sale or other intended disposition is to be made
43 shall be sent by the secured party to the debtor, and ex-

44 cept in the case of consumer goods to any other person
45 who has a security interest in the collateral and who
46 has duly filed a financing statement indexed in the name
47 of the debtor in this state or who is known by the se-
48 cured party to have a security interest in the collateral.
49 The secured party may buy at any public sale and if the
50 collateral is of a type customarily sold in a recognized
51 market or is of a type which is the subject of widely dis-
52 tributed standard price quotations he may buy at private
53 sale.

54 (4) When collateral is disposed of by a secured party
55 after default the disposition transfers to a purchaser for
56 value all of the debtor's rights therein, discharges the
57 security interest under which it is made and any se-
58 curity interest or lien subordinate thereto. The pur-
59 chaser takes free of all such rights and interests even
60 though the secured party fails to comply with the re-
61 quirements of this part or of any judicial proceedings

62 (a) in the case of a public sale, if the purchaser has
63 no knowledge of any defects in the sale and if he does
64 not buy in collusion with the secured party, other bid-
65 ders or the person conducting the sale; or

66 (b) in any other case, if the purchaser acts in good
67 faith.

68 (5) A person who is liable to a secured party under
69 a guaranty, indorsement, repurchase agreement or the
70 like and who receives a transfer of collateral from the
71 secured party or is subrogated to his rights has there-
72 after the rights and duties of the secured party. Such
73 a transfer of collateral is not a sale or disposition of the
74 collateral under this article.

**Sec. 9-505. Compulsory Disposition of Collateral; Ac-
2 ceptance of the Collateral as Discharge of Obligation.—**

3 (1) If the debtor has paid sixty per cent of the cash
4 price in the case of a purchase money security interest
5 in consumer goods or sixty per cent of the loan in the
6 case of another security interest in consumer goods, and
7 has not signed after default a statement renouncing or
8 modifying his rights under this part a secured party
9 who has taken possession of collateral must dispose of
10 it under Section 9-504 and if he fails to do so within

11 ninety days after he takes possession the debtor at his
12 option may recover in conversion or under Section 9-
13 507 (1) on secured party's liability.

14 (2) In any other case involving consumer goods or
15 any other collateral a secured party in possession may,
16 after default, propose to retain the collateral in satis-
17 faction of the obligation. Written notice of such pro-
18 posal shall be sent to the debtor and except in the case
19 of consumer goods to any other secured party who has
20 a security interest in the collateral and who has duly
21 filed a financing statement indexed in the name of the
22 debtor in this state or is known by the secured party
23 in possession to have a security interest in it. If the
24 debtor or other person entitled to receive notification
25 objects in writing within thirty days from the receipt
26 of the notification or if any other secured party objects in
27 writing within thirty days after the secured party ob-
28 tains possession the secured party must dispose of the
29 collateral under Section 9-504. In the absence of such
30 written objection the secured party may retain the col-
31 lateral in satisfaction of the debtor's obligation.

Sec. 9-506. Debtor's Right to Redeem Collateral.—At
2 any time before the secured party has disposed of collat-
3 eral or entered into a contract for its disposition under
4 Section 9-504 or before the obligation has been discharged
5 under Section 9-505 (2) the debtor or any other secured
6 party may unless otherwise agreed in writing after de-
7 fault redeem the collateral by tendering fulfillment of
8 all obligations secured by the collateral as well as the
9 expenses reasonably incurred by the secured party in
10 retaking, holding and preparing the collateral for dis-
11 position, in arranging for the sale, and to the extent
12 provided in the agreement and not prohibited by law,
13 his reasonable attorneys' fees and legal expenses.

Sec. 9-507. Secured Party's Liability for Failure to
2 **Comply With This Part.**—(1) If it is established that the
3 secured party is not proceeding in accordance with the
4 provision of this part disposition may be ordered or re-
5 strained on appropriate terms and conditions. If the
6 disposition has occurred the debtor or any person en-

7 titled to notification or whose security interest has been
8 made known to the secured party prior to the disposition
9 has a right to recover from the secured party any loss
10 caused by a failure to comply with the provisions of
11 this part. If the collateral is consumer goods, the debtor
12 has a right to recover in any event an amount not less
13 than the credit service charge plus ten per cent of the
14 principal amount of the debt or the time price differen-
15 tial plus ten per cent of the cash price.

16 (2) The fact that a better price could have been ob-
17 tained by a sale at a different time or in a different meth-
18 od from that selected by the secured party is not of it-
19 self sufficient to establish that the sale was not made in
20 a commercially reasonable manner. If the secured party
21 either sells the collateral in the usual manner in any
22 recognized market therefor or if he sells at the price
23 current in such market at the time of his sale or if he
24 has otherwise sold in conformity with reasonable com-
25 mercial practices among dealers in the type of property
26 sold he has sold in a commercially reasonable manner.
27 The principles stated in the two preceding sentences
28 with respect to sales also apply as may be appropriate
29 to other types of disposition. A disposition which has
30 been approved in any judicial proceeding or by any bona
31 fide creditors' committee or representative of creditors
32 shall conclusively be deemed to be commercially reason-
33 able, but this sentence does not indicate that any such
34 approval must be obtained in any case nor does it indi-
35 cate that any disposition not so approved is not com-
36 mercially reasonable.

Article 10. Effective Date and Repealer

Section 10-101. Effective Date.—This act applies to
2 transactions entered into and events occurring after the
3 effective date of this act.

Sec. 10-102. Specific Repealer; Provisions for Transi-
2 **tion.**—(1) The following acts and all other acts and parts
3 of acts inconsistent herewith are hereby repealed:

- 4 (a) the Uniform Negotiable Instruments Act;
- 5 (b) the Uniform Warehouse Receipts Act;

- 6 (c) the Uniform Stock Transfer Act;
7 (d) the Uniform Conditional Sales Act;
8 (e) the Uniform Trust Receipts Act.
9 (2) Transactions validly entered into before the effective date specified in Section 10-101 and the rights, duties
10 and interest flowing from them remain valid thereafter
11 and may be terminated, completed, consummated or enforced as required or permitted by any statute or other
12 law amended or repealed by this chapter as though such
13 repeal or amendment had not occurred.
14
15

Sec. 10-103. General Repealer.—Except as provided in
2 the following section, all acts and parts of acts inconsistent with this chapter are hereby repealed.
3

Sec. 10-104. Laws Not Repealed.—(1) The Article on
2 Documents of Title (Article 7) does not repeal or modify
3 any laws prescribing the form or contents of documents
4 of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects
5 not specifically dealt with herein; but the fact that such
6 laws are violated does not affect the status of a document
7 of title which otherwise complies with the definition of a
8 document of title (Section 1-201).
9
10 (2) This chapter does not repeal Article 4D of Chapter
11 31 cited as the Uniform Act for the Simplification of
12 Fiduciary Security Transfers, and if in any respect there
13 is any inconsistency between that article and the article
14 of this chapter on investment securities (Article 8) the
15 provisions of the former article shall control.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Parker

Chairman Senate Committee

Ethel L. Randall
Chairman House Committee

Originated in the House.

Takes effect July 1, 1964.

Thomas Hayes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Harvard W. Carson
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within approved this the 16th
day of March, 1963.

W. W. Barron
Governor

