

**Permanent Editorial Board for the Uniform Commercial Code**

**Report on Official Text of the Uniform Commercial Code**

**Draft for Public Comment**

**July 25, 2024**

*Comments on this draft must be submitted by no later than*  
*~~September 23, 2024~~*  
*January 31, 2025*  
*(deadline extended)*

Comments may be submitted by email to [UCCIcomments@ali.org](mailto:UCCIcomments@ali.org)

**This draft is subject to revisions based on comments received.  
The PEB reserves the right to withdraw this report.**

## PREFACE TO PEB COMMENTARY

The Permanent Editorial Board for the Uniform Commercial Code (PEB) acts under the authority of the American Law Institute and the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). The PEB has resolved to issue supplemental commentary on the Uniform Commercial Code (UCC) from time to time. The supplemental commentary of the PEB generally will be known as a *PEB Commentary*, to distinguish it from the Official Comments to the UCC. A *PEB Commentary* may be denominated a commentary, a report, or otherwise as determined by the PEB.

The Resolution states that:

The underlying purposes and policies of the *PEB Commentary* are those specified in Section 1-103(a). A *PEB Commentary* should come within one or more of the following specific purposes, which should be made apparent at the beginning of the Commentary: (1) to resolve an ambiguity in the UCC by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the UCC where the statute and/or the Official Comment leaves doubt as to the inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with Section 1-103(a)(2), to apply the principles of the UCC to new or changed circumstances; (5) to clarify or elaborate upon the operation of the UCC as it relates to other statutes (such as the Bankruptcy Code and federal and state consumer protection statutes) and general principles of law and equity pursuant to Section 1-103(b); or (6) to otherwise improve the operation of the UCC.

For more information about the Permanent Editorial Board for the Uniform Commercial Code, visit [www.ali.org](http://www.ali.org) or [www.uniformlaws.org](http://www.uniformlaws.org).

## PEB Report on Official Text of the Uniform Commercial Code

### Introduction

The Uniform Commercial Code has been updated many times in recent decades, but the series of revisions affected individual Articles of the UCC at different times. As the revisions occurred, a unified version of the text of the full UCC was not kept up to date. More than a decade ago, the Permanent Editorial Board launched an effort to compile a version of the Official Text of the entire UCC that accurately takes into account all past revisions. Among the many reasons for doing so was the realization that some amendments to the Official Comments, whether in connection with revisions to the statutory text or the issuance of PEB Commentaries, had not fully reflected changes to the text that were made at other times. It also became apparent that numerous cross-references were out of date and that non-substantive errors in spelling, grammar, and citation form needed to be corrected.

To address these problems and enable the compilation of an Official Text that is internally consistent and historically accurate, this Report sets forth changes to the Official Comments to Articles 1, 2, 2A, 3, 4, 4A, 5, 6, 7, 8, and 9. Only the changes are shown, not the entire compiled Official Text.

The formatting of the Official Text is also being made consistent across Articles, although such changes are generally outside the scope of those highlighted in this Report. For example, Section captions will all use the word “Section” rather than a section symbol; will use initial capital letters, except for prepositions and conjunctions; and will contain no period at the end. Sentences will be followed by one space, not two. One formatting change that this Report does depict is the removal of the occasional references to when a comment was amended (e.g., “amended 1999”). Such references appeared haphazardly, did not identify the source of the change, and did not indicate what was changed. In their place, a notation is being added to the title page of each Article indicating the history of changes to the Article. References in the Official Comments to a specific PEB Commentary were retained.

The PEB invites comment on the changes and any similar changes that should be made (e.g., other cross-references that need to be updated or errors in spelling, grammar, or citation form). Although suggestions for more substantive clarifications or corrections are always welcome, any such changes would be considered separately.

**ARTICLE 1 – GENERAL PROVISIONS**

**Section 1-101. Short Titles**

\* \* \*

**Official ~~Comments~~Comment**

\* \* \*

~~1.~~ Each other article of the Uniform Commercial Code may also be cited by its own short title. See Sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, 9-101, 12-101 and A-101.

\* \* \*

**Section 1-102. Scope of Article**

\* \* \*

**~~Preliminary Comments~~Official Comment**

\* \* \*

~~1.~~ This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always been the case – the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See also Comment 1 to Section 1-301.

\* \* \*

Section 1-103. Construction Of [Uniform Commercial Code] to Promote Its Purposes and Policies; Applicability of Supplemental Principles of Law

\* \* \*

**Official ~~Comments~~Comment**

**Source:** Former Section ~~1-102(1)-(2)~~ 1-102(1), (2); Former Section 1-103.

\* \* \*

Even prior to the enactment of the Uniform Commercial Code, courts were careful to keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.*, ~~158 Or. 1~~, 73 P.2d 1391 (Or. 1937), and compare Section 1-104. The courts have often recognized that the policies embodied in an act are applicable in reason to

subject-matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.*, 239 U.S. 520, ~~36 S. Ct. 194~~, ~~60 L. Ed. 417~~ (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the ~~subject-matter~~ [subject matter](#) had been intentionally excluded from the act in general. *Agar v. Orda*, ~~264 N.Y. 248~~, 190 N.E. 479 ([N.Y.](#) 1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that Act was intentionally limited to goods "other than things in action."). They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.*, ~~156 Minn. 201~~, 194 N.W. 399 ([Minn.](#) 1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission allowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

\* \* \*

### **Section 1-104. Construction Against Implied Repeal**

\* \* \*

#### **Official ~~Comments~~[Comment](#)**

\* \* \*

~~1-~~This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention should not lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

### **Section 1-105. Severability**

\* \* \*

#### **Official ~~Comments~~[Comment](#)**

~~1-~~This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

### **Section 1-106. Use of Singular and Plural; Gender**

\* \* \*

**Official ~~Comments~~ Comment**

~~1.~~ This section makes it clear that the use of singular or plural in the text of the Uniform Commercial Code is generally only a matter of drafting style – singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. *See, e.g.*, Section 9-322.

**Section 1-107. Section Captions**

\* \* \*

**Official ~~Comments~~ Comment**

\* \* \*

~~1.~~ Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with respect to subsection headings appearing in Articles 9, 12, and A (Transitional Provisions). See Section 9-101, Comment 3 (“subsection headings are not a part of the official text itself and have not been approved by the sponsors.”); Section 12-101, Comment; Section A-101, Comment.

**Section 1-108. Relation to Electronic Signatures in Global and National Commerce Act**

\* \* \*

**Official ~~Comments~~ Comment**

\* \* \*

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq* became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of ~~section~~ Section 101 of that Act with respect to state law if such statute, *inter alia*, specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the

enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

\* \* \*

## Section 1-201. General Definitions

\* \* \*

### Official ~~Comments~~Comment

\* \* \*

**Changes from former law:** In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in Article 1, as stated in former Section 1-201, but also those appearing in other Articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, Sections 3-103(a)~~(9)~~(12) (defining “promise,” in relevant part, as “a written undertaking to pay money signed by the person undertaking to pay”) and 3-303(a)(1) (indicating that an instrument is issued or transferred for value if “the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed”). It is clear from the statutory context of the use of the word “promise” in Section 3-303(a)(1) that the term was not used in the sense of its definition in Section 3-103(a)~~(9)~~(12). Thus, the Section 3-103(a)~~(9)~~(12) definition should not be used to give meaning to the word “promise” in Section 3-303(a).

\* \* \*

Two definitions in former Section 1-201 have been deleted. The definition of “honor” in former Section 1-201(21) has been ~~moved to Section 2-103(1)(b), inasmuch as the definition only applies to the use of the word in Article 2.~~ deleted but a definition of that term applicable to Article 5 remains in Section 5-102(a)(8). The definition of “telegram” in former Section 1-201(41) has been deleted because that word no longer appears in the definition of “conspicuous.”

\* \* \*

4. “Bank.” Derived from Section ~~4A-104~~4A-105.

\* \* \*

16. “Document of title.” Derived from former Section 1-201, which was derived from Section 76, Uniform Sales Act. This definition makes explicit that the obligation or designation of a third party as “bailee” is essential to a document of title and clearly rejects any such result as obtained in *Hixson v. Ward*, 254 ~~Ill.App.~~[Ill. App.](#) 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included, including documents which gain commercial recognition in the international arena. See UNCITRAL Draft Instrument on the Carriage of Goods ~~By~~[by](#) Sea. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

\* \* \*

### **Section 1-202. Notice; Knowledge**

\* \* \*

**Official ~~Comments~~[Comment](#)**

### **Section 1-203. Lease Distinguished from Security Interest**

\* \* \*

**Official ~~Comments~~[Comment](#)**

\* \* \*

**Changes from former law:** This section is substantively identical to those portions of former Section 1-201(37) that distinguished “true” leases from security interests, except that the definition of “present value” formerly embedded in Section 1-201(37) ~~(1987)~~ has been placed in Section ~~1-201(28)~~[1-201\(b\)\(28\)](#).

\* \* \*

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: what is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in ~~the 1978 Official Text of the Act,~~ Section 1-201(37), ~~which prevailed until Article 2A was promulgated.~~ The confusion was compounded by the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee’s interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to



the lessor. This has significant implications to the lessee's creditors. "On common law theory, the lessor, since he has not parted with title, is entitled to full protection against the lessee's creditors and trustee in bankruptcy . . . ." 1 G. Gilmore, *Security Interests in Personal Property* Section 3.6, at 76 (1965).

Under pre-UCC chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured Transactions (Article 9) did not change the common law in that respect. Coogan, *Leasing and the Uniform Commercial Code*, in EQUIPMENT LEASING – LEVERAGED LEASING 681, 700 n.25, 729 n.80 (2d ed. 1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest [previously](#) in Section 1-201(37) ~~of the 1978 Official Text of the Act~~ provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, *i.e.*, leases intended as security; however, the definition became vague and outmoded.

\* \* \*

Prior to enactment of the rules now codified in this section, ~~the 1978 Official Text of~~ Section 1-201(37) provided that whether a lease was intended as security (*i.e.*, a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

\* \* \*

Subsections (a) and (b) were originally taken from Section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. [Grant](#) Gilmore, *Security Law, Formalism and Article 9*, 47 ~~Neb.L.Rev.~~ [Neb. L. Rev.](#) 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security Interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus correcting early statutory gloss, *e.g.*, *In re Royer's Bakery, Inc.*, 1 U.C.C. Rep. Serv. (Callaghan) 342 (~~Bankr.E.D.Pa.~~ [Bankr. E.D. Pa.](#) 1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 ~~Bankr.B.R.~~ [Bankr. B.R.](#) 647, 651-52 (~~Bankr.W.D.Wis.~~ [Bankr. W.D. Wis.](#) 1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this

section. *In re Celeryvale Transp.*, 44 ~~Bankr.B.R.~~ 1007, 1014-15 (~~Bankr.E.D.Tenn.1984~~[Bankr. E.D. Tenn. 1984](#)). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 ~~Bankr.B.R.~~ 370, 371-73 (~~Bankr.W.D.Wis.1983~~[Bankr. W.D. Wis. 1983](#)).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not *per se* create a security interest. *Rushton v. Shea*, 419 ~~F.Supp.~~[F. Supp.](#) 1349, 1365 (~~D.Del.1976~~[D. Del. 1976](#)). Subparagraphs (2) and (3) provide the same regarding the provisions of the typical net lease. *Compare All-States Leasing Co. v. Ochs*, 42 ~~Or.App. 319,~~ 600 P.2d 899 (~~Ct.App.1979~~[Or. Ct. App. 1979](#)), with *In re Tillery*, 571 F.2d 1361 (~~5th Cir.1978~~[5th Cir. 1978](#)). Subparagraph (4) restates and expands the provisions of the ~~1978 Official Text of~~ Section 1-201(37) [\(1962\)](#) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. *Compare Arnold Mach. Co. v. Balls*, 624 P.2d 678 (Utah 1981), with *Aoki v. Shepherd Mach. Co.*, 665 F.2d 941 (~~9th Cir.1982~~[9th Cir. 1982](#)).

\* \* \*

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 F.2d 1139 (~~7th Cir.1982~~[7th Cir. 1982](#)). This was not done because it would unnecessarily complicate the definition. Further development of this rule is left to the courts.

\* \* \*

## Section 1-204. Value

\* \* \*

### Official ~~Comments~~[Comment](#)

\* \* \*

This definition is not applicable to Articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. See Sections ~~4-208, 4-209~~[4-211, 4-214](#), 3-303. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is “immediately available” within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in

collection arise in connection with the specific transaction involved. Article 12 adopts the substance of the Article 3 definition. See Section 12-102(a)(4).

### **Section 1-205. Reasonable Time; Seasonableness**

\* \* \*

#### **Official ~~Comments~~Comment**

\* \* \*

### **Section 1-206. Presumptions**

\* \* \*

#### **Official ~~Comments~~Comment**

\* \* \*

~~1.~~ Several sections of the Uniform Commercial Code state that there is a “presumption” as to a certain fact, or that the fact is “presumed.” This section, derived from the definition appearing in former Section 1-201(31), indicates the effect of those provisions on the proof process.

### **Section 1-301. Territorial Applicability; Parties’ Power to Choose Applicable Law**

\* \* \*

#### **Official Comment**

\* \* \*

1. Subsection (a) states affirmatively the right of the parties to a multi-state transaction or a transaction involving foreign trade to choose their own law. That right is subject to the firm rules stated in the sections listed in subsection (c), and is limited to jurisdictions to which the transaction bears a "reasonable relation." In general, the test of "reasonable relation" is similar to that laid down by the Supreme Court in *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403, ~~47 S.Ct. 626, 71 L.Ed. 1123~~ (1927). Ordinarily the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs. But an agreement as to choice of law may sometimes take effect as a shorthand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.

\* \* \*

### **Section 1-302. Variation by Agreement**

\* \* \*

Official ~~Comments~~Comment

\* \* \*

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: “the effect” of its provisions may be varied by “agreement.” The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in pre-Code cases such as *Manhattan Co. v. Morgan*, ~~242 N.Y. 38~~, 150 N.E. 594 (N.Y. 1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104; nor can they change the meaning of such terms as “bona fide purchaser,” “holder in due course,” or “due negotiation,” as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. “Agreement” here includes the effect given to course of dealing, usage of trade and course of performance by Sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under Section 1-103. The rights of third parties under Section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

\* \* \*

2. An agreement that varies the effect of provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UNCITRAL or ~~Unidroit~~UNIDROIT (see, e.g., ~~Unidroit~~UNIDROIT Principles of International Commercial Contracts), or non-legal codes such as trade codes.

\* \* \*

**Section 1-303. Course of Performance, Course of Dealing, and Usage of Trade**

\* \* \*

Official ~~Comments~~Comment

\* \* \*

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (Sections 1-304, 2-302, 2A-108) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage

must be “reasonable.” However, the emphasis is shifted. The very fact of commercial acceptance makes out a *prima facie* case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

\* \* \*

### **Section 1-304. Obligation of Good Faith**

\* \* \*

Official ~~Comments~~[Comment](#)

\* \* \*

### **Section 1-305. Remedies To Be Liberally Administered**

\* \* \*

Official ~~Comments~~[Comment](#)

\* \* \*

### **Section 1-306. Waiver or Renunciation of Claim or Right after Breach**

\* \* \*

Official ~~Comments~~[Comment](#)

\* \* \*

### **Section 1-307. Prima Facie Evidence by Third-Party Documents**

\* \* \*

Official ~~Comments~~[Comment](#)

\* \* \*

### **Section 1-308. Performance or Acceptance under Reservation of Rights**

\* \* \*

Official ~~Comments~~[Comment](#)

\* \* \*

## Section 1-309. Option to Accelerate at Will

\* \* \*

### Official ~~Comments~~[Comment](#)

\* \* \*

~~1.~~ The common use of acceleration clauses in many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

\* \* \*

## Section 1-310. Subordinated Obligations

\* \* \*

### Official ~~Comments~~[Comment](#)

\* \* \*

3. The enforcement of subordination agreements is largely left to supplementary principles under Section 1-103. If the subordinated debt is evidenced by a certificated security, Section 8-202(a) authorizes enforcement against purchasers on terms stated or referred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under Sections 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Sections ~~3-302(3)(a), 3-306, and 8-317~~ [3-302\(c\)\(i\)](#), [3-305\(a\)\(2\)](#), and [8-112\(a\)](#) severely limit the rights of levying creditors of a subordinated creditor in such cases.

## ARTICLE 2 – SALES

### Section 2-102. Scope; Certain Security and Other Transactions Excluded from This Article

\* \* \*

#### Official Comment

\* \* \*

6. The rules of subsections (1) and (2) are essentially gap fillers that apply when the parties' agreement is silent on what legal rules govern the different aspects of their transaction. In general, parties are free to preclude the application of this Article to the aspects of their transaction that are not about the sale of goods.

**Example 9.** Robotics Manufacturer contracts to design, build, and sell customized robotics to Car Maker. The transaction includes a sale of goods and the provision of services and is therefore a hybrid transaction. Assume that the sale-of-goods aspects predominate. The parties may, in their agreement, provide that Article 2 does not govern the services aspects of the transaction.

As Example 9 illustrates, parties may agree that Article 2 will not govern non-goods aspects of a hybrid transaction, even though the sale-of-goods aspects predominate. But, when sale-of-goods aspects predominate, the parties cannot agree that Article 2 does not govern matters that relate to the transaction as a whole, such as contract formation and enforceability. For example, in a situation such as Example 9, if the requirements of the Section 2-201 statute of frauds are not satisfied, it would make little sense to hold that the services aspects of the transaction are enforceable when the provision of services is clearly dependent on the existence of the sale-of-goods aspects. Of course, even when this ~~article~~ [Article](#) applies, its provisions may be varied by agreement to the extent provided in section 1-302.

\* \* \*

### Section 2-104. Definitions: “Merchant”; “Between Merchants”; “Financing Agency”

\* \* \*

#### Official Comment

\* \* \*

2. The term “merchant” as defined here roots in the “law merchant” concept of a professional in business. The professional status under the definition may be based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized

knowledge as to both and which kind of specialized knowledge may be sufficient to establish the merchant status is indicated by the nature of the provisions.

The special provisions as to merchants appear only in this Article and they are of three kinds. Sections 2-201(2), 2-205, 2-207 and 2-209 dealing with the statute of frauds, firm offers, confirmatory memoranda and modification rest on normal business practices which are or ought to be typical of and familiar to any person in business. For purposes of these sections almost every person in business would, therefore, be deemed to be a “merchant” under the language “who . . . by his occupation holds himself out as having knowledge or skill peculiar to the practices . . . involved in the transaction . . .” since the practices involved in the transaction are non-specialized business practices such as answering mail. In this type of provision, banks or even universities, for example, well may be “merchants.” But even these sections only apply to a merchant in his mercantile capacity; a lawyer or bank president buying fishing tackle for his own use is not a merchant.

\* \* \*

A third group of sections ~~includes 2-103(1)(b), which provides that in the case of a merchant “good faith” includes observance of reasonable commercial standards of fair dealing in the trade;~~ 2-327(1)(c), 2-603 and 2-605, dealing with responsibilities of merchant buyers to follow seller’s instructions, etc.; 2-509 on risk of loss, and 2-609 on adequate assurance of performance. This group of sections applies to persons who are merchants under either the “practices” or the “goods” aspect of the definition of merchant.

\* \* \*

**Section 2-105. Definitions: Transferability; “Goods”; “Future” Goods; “Lot”; “Commercial Unit”**

\* \* \*

**Official Comment**

\* \* \*

1. Subsection (1) on “goods”: The phraseology of the prior uniform statutory provision has been changed so that:

\* \* \*

“Investment securities” are expressly excluded from the coverage of this Article. It is not intended by this exclusion, however, to prevent the application of a particular section of this Article by analogy to securities (as was done with the Original Sales Act in *Agar v. Orda*, ~~264 N.Y. 248~~, 190 N.E. 479, ~~99 A.L.R. 269~~ (N.Y. 1934)) when the reason of that section makes such application sensible and the situation involved is not covered by the Article of this Act dealing specifically with such securities (Article 8)



\* \* \*

**Section 2-106. Definitions: “Contract”; “Agreement”; “Contract for Sale”; “Sale”; “Present Sale”; “Conforming” to Contract; “Termination”; “Cancellation”**

\* \* \*

### **Official Comment**

\* \* \*

#### **Cross References:**

Point 2: Sections 1-203, 1-205, ~~2-208~~ and 2-508.

#### **Definitional Cross References:**

“Agreement”. Section 1-201.  
“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Remedy”. Section 1-201.  
“Goods”. Section 2-105.  
“~~Rights~~Right”. Section 1-201.  
“Party”. Section 1-201.  
“Seller”. Section 2-103.

### **Section 2-107. Goods to Be Severed from Realty: Recording**

\* \* \*

### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Contract for sale”. Section 2-106.  
“Goods”. Section 2-105.  
“Party”. Section 1-201.  
“Present sale”. Section 2-106.  
“~~Rights~~Right”. Section 1-201.  
“Seller”. Section 2-103.

## Section 2-201. Formal Requirements; Statute of Frauds.

\* \* \*

### Official Comment

\* \* \*

**Changes:** Completely re-phrased; restricted to sale of goods. See also Sections ~~1-206, 8-319~~ [2A-201, 5-104](#), and 9-203.

\* \* \*

### Definitional Cross References:

“Action”. Section 1-201.  
“Between merchants”. Section 2-104.  
“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Contract for sale”. Section 2-106.  
“Goods”. Section 2-105.  
“Notice”. Section ~~1-201~~[1-202](#).  
“Party”. Section 1-201.  
“Reasonable time”. Section ~~1-204~~[1-205](#).  
“Sale”. Section 2-106.  
“Seller”. Section 2-103.

## Section 2-205. Firm Offers.

\* \* \*

### Official Comment

\* \* \*

### Cross References:

Point 1: Section ~~1-102~~[1-103](#).  
Point 2: Section ~~1-102~~[1-103](#).  
Point 3: Section 2-201.  
Point 5: Section 2-302.

**Definitional Cross References:**

“Goods”. Section 2-105.  
“Merchant”. Section 2-104.  
["Record". Section 1-201](#)  
“Signed”. Section 1-201.  
~~“Writing”. Section 1-201.~~

**Section 2-206. Offer and Acceptance in Formation of Contract**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Buyer”. Section 2-103.  
“Conforming”. Section 2-106.  
“Contract”. Section 1-201.  
“Goods”. Section 2-105.  
“Notifies”. Section ~~1-201~~[1-202](#).  
“Reasonable time”. Section ~~1-204~~[1-205](#).

**Section 2-207. Additional Terms in Acceptance or Confirmation**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

See generally Section 2-302.  
Point 5: Sections 2-513, 2-602, 2-607, 2-609, 2-612, 2-614, 2-615, 2-616, 2-718 and 2-719.  
Point 6: Sections ~~1-102~~[1-103](#) and 2-104.

**Definitional Cross References:**

“Between merchants”. Section 2-104.  
“Contract”. Section 1-201.  
“Notification”. Section ~~1-201~~[1-202](#).  
“Reasonable time”. Section ~~1-204~~[1-205](#).

“Seasonably”. Section ~~1-204~~[1-205](#).  
“Send”. Section 1-201.  
“Term”. Section 1-201.  
“Written”. Section 1-201.

## Section 2-209. Modification, Rescission and Waiver

\* \* \*

### Official Comment

\* \* \*

The test of “good faith” ~~between merchants or as against merchants~~ includes “observance of reasonable commercial standards of fair dealing ~~in the trade~~” (Section ~~1-201(b)(20)~~[2-103](#)), and may in some situations require an objectively demonstrable reason for seeking a modification. But such matters as a market shift which makes performance come to involve a loss may provide such a reason even though there is no such unforeseen difficulty as would make out a legal excuse from performance under Sections 2-615 and 2-616.

3. Subsections (2) and (3) are intended to protect against false allegations of oral modifications. “Modification or rescission” includes abandonment or other change by mutual consent, contrary to the decision in *Green v. Doniger*, ~~300 N.Y. 238~~, 90 N.E.2d 56 ([N.Y.](#) 1949); it does not include unilateral “termination” or “cancellation” as defined in Section 2-106.

\* \* \*

### Cross References:

Point 1: Section ~~1-203~~[1-304](#).  
Point 2: Sections 1-201, ~~1-203~~[1-304](#), 2-615 and 2-616.  
Point 3: Sections 2-106, 2-201 and 2-202.  
Point 4: Sections 2-202 ~~and 2-208~~.

### Definitional Cross References:

“Agreement”. Section 1-201.  
“Between merchants”. Section 2-104.  
“Contract”. Section 1-201.  
“Notification”. Section ~~1-201~~[1-202](#).  
“Signed”. Section 1-201.  
“Term”. Section 1-201.  
“Writing”. Section 1-201.

## Section 2-210. Delegation of Performance; Assignment of Rights

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 3: Articles 5 and 9.

Point 4: Sections 2-306 and 2-609.

Point 5: Article 9, Sections 9-402, 9-404, ~~9-404~~[9-405](#), and 9-406.

Point 7: Article 9.

#### Definitional Cross References:

“Agreement”. Section 1-201.

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Party”. Section 1-201.

“~~Rights~~[Right](#)”. Section 1-201.

“Seller”. Section 2-103.

“Term”. Section 1-201.

## Section 2-301. General Obligations of Parties

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Section ~~1-106~~[1-305](#). See also Sections ~~1-205~~[1-303](#), ~~2-208~~, 2-209, 2-508 and 2-612.

\* \* \*

## Section 2-302. Unconscionable Contract or Clause

\* \* \*

### Official Comment

\* \* \*

1. \* \* \*

*Kansas City Wholesale Grocery Co. v. Weber Packing Corp.*, ~~93 Utah 414~~, 73 P.2d 1272 ([Utah](#) 1937), where a clause limiting time for complaints was held inapplicable to latent defects in a shipment of catsup which could be discovered only by microscopic analysis; *Hardy v. General Motors Acceptance Corp.*, ~~38 Ga.App. 463~~, 144 S.E. 327 ([Ga. Ct. App.](#) 1928), holding that a disclaimer of warranty clause applied only to express warranties, thus letting in a fair implied warranty; *Andrews Bros, v. Singer & Co.* (1934 CA) 1 K.B. 17, holding that where a car with substantial mileage was delivered instead of a “new” car, a disclaimer of warranties, including those “implied,” left unaffected an “express obligation” on the description, even though the Sale of Goods Act called such an implied warranty; *New Prague Flouring Mill Co. v. G. A. Spears*, ~~194 Iowa 417~~, 189 N.W. 815 ([Iowa](#) 1922), holding that a clause permitting the seller, upon the buyer’s failure to supply shipping instructions, to cancel, ship, or allow delivery date to be indefinitely postponed 30 days at a time by the inaction, does not indefinitely postpone the date of measuring damages for the buyer’s breach, to the seller’s advantage; and *Kansas Flour Mills Co. v. Dirks*, ~~100 Kan. 376~~, 164 P. 273 ([Kan.](#) 1917), where under a similar clause in a rising market the court permitted the buyer to measure his damages for non-delivery at the end of only one 30 day postponement; *Green v. Arcos, Ltd.* (1931 CA) 47 T.L.R. 336, where a blanket clause prohibiting rejection of shipments by the buyer was restricted to apply to shipments where discrepancies represented merely mercantile variations; *Meyer v. Packard Cleveland Motor Co.*, ~~106 Ohio St. 328~~, 140 N.E. 118 ([Ohio](#) 1922), in which the court held that a “waiver” of all agreements not specified did not preclude implied warranty of fitness of a rebuilt dump truck for ordinary use as a dump truck; *Austin Co. v. J. H. Tillman Co.*, ~~104 Or. 541~~, 209 P. 131 ([Or.](#) 1922), where a clause limiting the buyer’s remedy to return was held to be applicable only if the seller had delivered a machine needed for a construction job which reasonably met the contract description; *Bekkevold v. Potts*, ~~173 Minn. 87~~, 216 N.W. 790, ~~59 A.L.R. 1164~~ ([Minn.](#) 1927), refusing to allow warranty of fitness for purpose imposed by law to be negated by clause excluding all warranties “made” by the seller; *Robert A. Munroe & Co. v. Meyer* (1930) 2 K.B. 312, holding that the warranty of description overrides a clause reading “with all faults and defects” where adulterated meat not up to the contract description was delivered.

\* \* \*

## Section 2-303. Allocation or Division of Risks

\* \* \*

### Official Comment

\* \* \*

1. \* \* \*

Compare Section ~~1-102(4)~~[1-302](#).

\* \* \*

**Cross References:**

Point 1: Sections ~~1-102~~[1-302](#), 2-302.  
Point 2: Section 1-201.

\* \* \*

**Section 2-304. Price Payable in Money, Goods, Realty, or Otherwise**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 1: Section ~~1-102~~[1-103](#).  
Point ~~83~~: Sections ~~1-102~~, 1-103, 1-104 and 2-107.

\* \* \*

**Section 2-305. Open Price Term**

\* \* \*

**Official Comment**

\* \* \*

3. Subsection (2), dealing with the situation where the price is to be fixed by one party rejects the uncommercial idea that an agreement that the seller may fix the price means that he may fix any price he may wish by the express qualification that the price so fixed must be fixed in good faith. Good faith includes observance of reasonable commercial standards of fair dealing ~~in the trade if the party is a merchant~~. (Section ~~2-103~~[1-201\(b\)\(20\)](#)). But in the normal case a “posted price” or a future seller’s or buyer’s “given price,” “price in effect,” “market price,” or the like satisfies the good faith requirement.

\* \* \*

6. Throughout the entire section, the purpose is to give effect to the agreement which has been made. That effect, however, is always conditioned by the requirement of good faith action which is made an inherent part of all contracts within this Act. (Section ~~1-203~~[1-304](#)).

### **Cross References:**

Point 1: Sections 2-204(3), 2-706, 2-712 and 2-716.

Point 3: Section 2-103.

Point 5: Sections 2-311 and 2-610.

Point 6: Section ~~1-203~~[1-304](#).

\* \* \*

### **Section 2-306. Output, Requirements and Exclusive Dealings**

\* \* \*

#### **Official Comment**

\* \* \*

2. Under this Article, a contract for output or requirements is not too indefinite since it is held to mean the actual good faith output or requirements of the particular party. Nor does such a contract lack mutuality of obligation since, under this section, the party who will determine quantity is required to operate his plant or conduct his business in good faith and according to commercial standards of fair dealing in the trade so that his output or requirements will approximate a reasonably foreseeable figure. Reasonable elasticity in the requirements is expressly envisaged by this section and good faith variations from prior requirements are permitted even when the variation may be such as to result in discontinuance. A shutdown by a requirements buyer for lack of orders might be permissible when a shut-down merely to curtail losses would not. The essential test is whether the party is acting in good faith. Similarly, a sudden expansion of the plant by which requirements are to be measured would not be included within the scope of the contract as made but normal expansion undertaken in good faith would be within the scope of this section. One of the factors in an expansion situation would be whether the market price had risen greatly in a case in which the requirements contract contained a fixed price. Reasonable variation of an extreme sort is exemplified in *Southwest Natural Gas Co. v. Oklahoma Portland Cement Co.*, 102 F.2d 630 (~~CCA~~[10th Cir.](#), 1939). This Article takes no position as to whether a requirements contract is a provable claim in bankruptcy.

\* \* \*

### **Cross References:**

Point 4: Section 2-210.

Point 5: Sections ~~1-203~~[1-304](#) and 2-609.

\* \* \*



## Section 2-307. Delivery in Single Lot or Several Lots

\* \* \*

### Official Comment

\* \* \*

#### Purposes of Changes:

3. \* \* \*

In such cases, a partial delivery is not subject to rejection for the defect in quantity alone, if the circumstances do not indicate a repudiation or default by the seller as to the expected balance or do not give the buyer ground for suspending his performance because of insecurity under the provisions of Section 2-609. However, in such cases the undelivered balance of goods under the contract must be forthcoming within a reasonable time and in a reasonable manner according to the policy of Section 2-503 on manner of tender of delivery. This is reinforced by the express provisions of Section 2-608 that if a lot has been accepted on the reasonable assumption that its nonconformity will be cured, the acceptance may be revoked if the cure does not seasonably occur. The section rejects the rule of *Kelly Construction Co. v. Hackensack Brick Co.*, ~~91 N.J.L. 585~~, 103 A. 417, ~~2 A.L.R. 685~~ (N.J. 1918) and approves the result in *Lynn M. Ranger, Inc. v. Gildersleeve*, ~~106 Conn. 372~~, 138 A. 142 (Conn. 1927) in which a contract was made for six carloads of coal then rolling from the mines and consigned to the seller but the seller agreed to divert the carloads to the buyer as soon as the car numbers became known to him. He arranged a diversion of two cars and then notified the buyer who then repudiated the contract. The seller was held to be entitled to his full remedy for the two cars diverted because simultaneous delivery of all of the cars was not contemplated by either party.

\* \* \*

#### Definitional Cross References:

“Contract for sale”. Section 2-106.

“Goods”. Section 2-105.

“Lot”. Section 2-105.

“Party”. Section 1-201.

“~~Rights~~Right”. Section 1-201.

## Section 2-309. Absence of Specific Time Provisions; Notice of Termination

\* \* \*

## Official Comment

\* \* \*

1. Subsection (1) requires that all actions taken under a sales contract must be taken within a reasonable time where no time has been agreed upon. The reasonable time under this provision turns on the criteria as to “reasonable time” and on good faith and commercial standards set forth in Sections ~~1-203, 1-204 and 2-103~~ [1-201\(b\)\(20\)](#), [1-205](#) and [1-304](#). It thus depends upon what constitutes acceptable commercial conduct in view of the nature, purpose and circumstances of the action to be taken. Agreement as to a definite time, however, may be found in a term implied from the contractual circumstances, usage of trade or course of dealing or performance as well as in an express term. Such cases fall outside of this subsection since in them the time for action is “agreed” by usage.

\* \* \*

### Cross References:

Point 1: Sections ~~1-203, 1-204 and 2-103~~ [1-201\(b\)\(20\)](#), [1-205](#) and [1-304](#).

Point 2: Sections 2-320, 2-321, 2-504, and 2-511 through 2-514.

Point 5: Section ~~1-203~~ [1-304](#).

Point 6: Section 2-609.

Point 7: Section 2-204.

Point 9: Sections 2-106, 2-318, 2-610 and 2-703.

### Definitional Cross References:

“Agreement”. Section 1-201.

“Contract”. Section 1-201.

“Notification”. Section ~~1-201~~ [1-202](#).

“Party”. Section 1-201.

“Reasonable time”. Section ~~1-204~~ [1-205](#).

“Termination”. Section 2-106.

## Section 2-311. Options and Cooperation Respecting Performance

\* \* \*

## Official Comment

\* \* \*

4. The remedy provided in subsection (3) is one which does not operate in the situation which falls within the scope of Section 2-614 on substituted performance. Where the failure to cooperate results from circumstances set forth in that Section, the other party is under a duty to proffer or demand (as the case may be) substitute performance as a condition to claiming rights against the ~~noncooperating~~ non-cooperating party.

**Cross References:**

- Point 1: Sections 1-201, 1-304, and 2-204 ~~and 1-203~~.
- Point 3: Sections ~~1-203~~ 1-304 and 2-609.
- Point 4: Section 2-614.

**Definitional Cross References:**

- “Agreement”. Section 1-201.
- “Buyer”. Section 2-103.
- “Contract for sale”. Section 2-106.
- “Goods”. Section 2-105.
- “Party”. Section 1-201.
- “Remedy”. Section 1-201.
- “Seasonably”. Section ~~1-204~~ 1-205.
- “Seller”. Section 2-103.

**Section 2-312. Warranty of Title and Against Infringement; Buyer’s Obligation Against Infringement**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

- Point 1: Section 2-403.
- Point 2: Sections 2-607 and 2-725.
- Point 3: Section ~~1-203~~ 1-304.
- Point 4: Sections 2-609 and 2-725.
- Point 6: Section 2-316.

\* \* \*

**Section 2-313. Express Warranties by Affirmation, Promise, Description, Sample**

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 1: Section 2-316.

Point 2: Sections ~~1-102(3)~~[1-302\(b\)](#) and 2-318.

Point 3: Section 2-316(2)(b).

Point 4: Section 2-316.

Point 5: Sections ~~1-205(4)~~[1-303\(e\)](#) and 2-314.

Point 6: Section 2-316.

Point 7: Section 2-209.

Point 8: Section 1-103.

\* \* \*

### Section 2-314. Implied Warranty: Merchantability; Usage of Trade

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 1: Section 2-316.

Point 3: Sections ~~1-203~~[1-304](#) and 2-104.

Point 5: Section 2-315

Point 11: Section 2-316.

Point 12: Sections 1-201, ~~1-205~~[1-303](#) and 2-316.

\* \* \*

### Section 2-316. Exclusion or Modification of Warranties

\* \* \*

### Official Comment

\* \* \*

**Cross References:**

Point 2: Sections 2-202, 2-718 and 2-719.

Point 7: Sections ~~1-205~~[1-303](#) ~~and 2-208~~.

**Definitional Cross References:**

“Agreement”. Section 1-201.

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Course of dealing”. Section ~~1-205~~[1-303](#).

“Goods”. Section 2-105.

“Remedy”. Section 1-201.

“Seller”. Section 2-103.

“Usage of trade”. Section ~~1-205~~[1-303](#).

**Section 2-319. F.O.B. and F.A.S. Terms**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreed”. Section 1-201.

“Bill of lading”. Section 1-201.

“Buyer”. Section 2-103.

“Goods”. Section 2-105.

“Seasonably”. Section ~~1-204~~[1-205](#).

“Seller”. Section 2-103.

“Term”. Section 1-201.

**Section 2-320. C.I.F. and C. & F. Terms**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

- “Bill of lading”. Section 1-201.
- “Buyer”. Section 2-103.
- “Contract”. Section 1-201.
- “Goods”. Section 2-105.
- “~~Rights~~Right”. Section 1-201.
- “Seller”. Section 2-103.
- “Term”. Section 1-201.

**Section 2-323. Form of Bill of Lading Required in Overseas Shipment; “Overseas”**

\* \* \*

**Official Comment**

\* \* \*

2. \* \* \*

This subsection codifies that practice as between buyer and seller. ~~Article 5 (Section 5-113) authorizes banks~~Banks presenting drafts under letters of credit ~~may to~~ give indemnities against the missing parts, and this subsection means that the buyer must accept and act on such indemnities if he in good faith deems them adequate. But neither this subsection nor Article 5 decides whether a bank which has issued a letter of credit is similarly bound. The issuing bank’s obligation under a letter of credit is independent and depends on its own terms. See Article 5.

**Cross References:**

Sections 2-508(2), ~~5-113~~.

\* \* \*

**Section 2-324. “No Arrival, No Sale” Term**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 1: Section ~~1-304~~203.

Point 2: Section 2-501(a) and (c).  
Point 6: Section 2-613.

\* \* \*

### **Section 2-325. “Letter of Credit” Term; “Confirmed Credit”**

\* \* \*

#### **Official Comment**

\* \* \*

1. Subsection (2) follows the general policy of this Article and Article 3 (Section ~~3-802~~[3-310\(b\)](#)) on conditional payment, under which payment by check or other short-term instrument is not ordinarily final as between the parties if the recipient duly presents the instrument and honor is refused. Thus the furnishing of a letter of credit does not substitute the financing agency’s obligation for the buyer’s, but the seller must first give the buyer reasonable notice of his intention to demand direct payment from him.

2. Subsection (3) requires that the credit be irrevocable and be a prime credit as determined by the standing of the issuer. It is not necessary, unless otherwise agreed, that the credit be a negotiation credit; the seller can finance himself by an assignment of the proceeds under Section ~~5-116(2)~~[5-114](#).

\* \* \*

#### **Cross References:**

Sections 2-403, 2-511(3) and ~~3-802~~[3-310\(b\)](#) and Article 5.

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Contract for sale”. Section 2-106.  
“Draft”. Section 3-104.  
“Financing agency”. Section 2-104.  
“Notifies”. Section ~~1-201~~[1-202](#).  
“Overseas”. Section 2-323.  
“Purchaser”. Section 1-201.  
“Seasonably”. Section ~~1-204~~[1-205](#).  
“Seller”. Section 2-103.  
“Term”. Section 1-201.

## Section 2-327. Special Incidents of Sale on Approval and Sale or Return

\* \* \*

### Official Comment

\* \* \*

#### 1. In the case of a sale on approval:

~~If~~ if all of the goods involved conform to the contract, the buyer's acceptance of part of the goods constitutes acceptance of the whole. Acceptance of part falls outside the normal intent of the parties in the "on approval" situation and the policy of this Article allowing partial acceptance of a defective delivery has no application here. A case where a buyer takes home two dresses to select one commonly involves two distinct contracts; if not, it is covered by the words "unless otherwise agreed".

\* \* \*

4. Notice of election to return given by the buyer in a sale on approval is sufficient to relieve him of any further liability. Actual return by the buyer to the seller is required in the case of a sale or return contract. What constitutes due "giving" of notice, as required in "on approval" sales, is governed by the provisions on good faith and notice. "Seasonable" is used here as defined in Section ~~1-204~~1-205. Nevertheless, the provisions of both this Article and of the contract on this point must be read with commercial reason and with full attention to good faith.

#### Cross References:

Point 1: Sections 2-501, 2-601 and 2-603.

Point 2: Sections 2-607 and 2-608.

Point 4: Sections ~~1-201~~1-202 and ~~1-204~~1-205.

#### Definitional Cross References:

"~~Agreed~~Agreement". Section 1-201.

"Buyer". Section 2-103.

"Commercial unit". Section 2-105.

"Conform". Section 2-106.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Merchant". Section 2-104.

"Notifies". Section ~~1-201~~1-202.

"Notification". Section ~~1-201~~1-202.

"Sale on approval". Section 2-326.



“Sale or return”. Section 2-326.  
“Seasonably”. Section ~~1-204~~[1-205](#).  
“Seller”. Section 2-103.

### **Section 2-328. Sale by Auction**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Good faith”. Section 1-201.  
“Goods”. Section 2-105.  
“Lot”. Section 2-105.  
“Notice”. Section ~~1-201~~[1-202](#).  
“Sale”. Section 2-106.  
“Seller”. Section 2-103.

### **Section 2-401. Passing of Title; Reservation for Security; Limited Application of This Section**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Agreement”. Section 1-201.  
“Bill of lading”. Section 1-201.  
“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Contract for sale”. Section 2-106.  
“Delivery”. Section 1-201.  
“Document of title”. Section 1-201.  
“Good faith”. Section ~~2-103~~[1-201](#).  
“Goods”. Section 2-105.  
“Party”. Section 1-201.  
“Purchaser”. Section 1-201.

“Receipt” of goods. Section 2-103.  
“Remedy”. Section 1-201.  
“~~Rights~~[Right](#)”. Section 1-201.  
“Sale”. Section 2-106.  
“Security interest”. Section 1-201.  
“Seller”. Section 2-103.  
“Send”. Section 1-201.

### **Section 2-402. Rights of Seller’s Creditors Against Sold Goods**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Contract for sale”. Section 2-106.  
“Creditor”. Section 1-201.  
“Good faith”. Section ~~2-103~~[1-201](#).  
“Goods”. Section 2-105.  
“Merchant”. Section 2-104.  
“Money”. Section 1-201.  
“Reasonable time”. Section ~~1-204~~[1-205](#).  
“~~Rights~~[Right](#)”. Section 1-201.  
“Sale”. Section 2-106.  
“Seller”. Section 2-103.

### **Section 2-403. Power to Transfer; Good Faith Purchase of Goods; “Entrusting”**

\* \* \*

#### **Official Comment**

\* \* \*

4. Except as provided in subsection (1), the rights of purchasers other than buyers in ordinary course are left to the Articles on Secured Transactions, Documents of Title, and [if not repealed](#), Bulk Sales.

#### **Cross References:**

Point 1: Sections 1-103 and 1-201.

Point 2: Sections 1-201, 2-402, 7-205 and 9-320.

Points 3 and 4: Sections ~~1-102~~, 1-201, 1-302, 2-104, 2-707 and ~~Articles 6, 7, and 9~~ and, if not repealed, 6.

**Definitional Cross References:**

“Buyer in ordinary course of business”. Section 1-201.

“Good faith”. Sections 1-201 and ~~2-103~~ 1-304.

“Goods”. Section 2-105.

“Person”. Section 1-201.

“Purchaser”. Section 1-201.

“Signed”. Section 1-201.

“Term”. Section 1-201.

“Value”. Section ~~1-201~~ 1-204.

**Section 2-501. Insurable Interest in Goods; Manner of Identification of Goods**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreement”. Section 1-201.

“Contract”. Section 1-201.

“Contract for sale”. Section 2-106.

“Future goods”. Section 2-105.

“Goods”. Section 2-105.

“Notification”. Section ~~1-201~~ 1-202.

“Party”. Section 1-201.

“Sale”. Section 2-106.

“Security interest”. Section 1-201.

“Seller”. Section 2-103.

**Section 2-503. Manner of Seller’s Tender of Delivery**

\* \* \*

**Official Comment**

\* \* \*

2. The seller's general duty to tender and deliver is laid down in Section 2-301 and more particularly in Section 2-507. The seller's right to a receipt if he demands one and receipts are customary is governed by Section ~~1-205~~1-303. Subsection (1) of the present section proceeds to set forth two primary requirements of tender: first, that the seller "put and hold conforming goods at the buyer's disposition" and, second, that he "give the buyer any notice reasonably necessary to enable him to take delivery."

\* \* \*

### **Cross References:**

Point 2: Sections ~~1-205~~1-303, 2-301, 2-310, 2-507 and 2-513 and Article 7.

Point 5: Sections 2-308, 2-310 and 2-509.

Point 7: Section 2-614(1).

Specific matters involving tender are covered in many additional sections of this Article. See Sections ~~1-205~~1-303, 2-301, 2-306 to 2-319, 2-321(3), 2-504, 2-507(2), 2-511(1), 2-513, 2-612 and 2-614.

### **Definitional Cross References:**

"Agreement". Section 1-201.

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Conforming". Section 2-106.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Dishonor". Section ~~3-508~~3-502.

"Document of title". Section 1-201.

"Draft". Section 3-104.

"Goods". Section 2-105.

"Notification". Section ~~1-201~~1-202.

"Reasonable time". Section ~~1-204~~1-205.

"Receipt" of goods. Section 2-103.

~~"Rights~~Right". Section 1-201.

"Seasonably". Section ~~1-204~~1-205.

"Seller". Section 2-103.

"Written". Section 1-201.

### **Section 2-504. Shipment by Seller**

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Point 1: Sections 2-319, 2-320 and 2-503(2).  
Point 2: Sections 1-203, 2-323(2), 2-601 and 2-614(1).  
Point 3: Section 2-311(2).  
Point 5: Section ~~1-203~~[1-304](#).

### Definitional Cross References:

“Agreement”. Section 1-201.  
“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Delivery”. Section 1-201.  
“Goods”. Section 2-105.  
“Notifies”. Section ~~1-201~~[1-202](#).  
“Seller”. Section 2-103.  
“Send”. Section 1-201.  
“Usage of trade”. Section ~~1-205~~[1-303](#).

## Section 2-506. Rights of Financing Agency

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Buyer”. Section 2-103.  
“Document of title”. Section 1-201.  
“Draft”. Section 3-104.  
“Financing agency”. Section 2-104.  
“Good faith”. Section ~~2-103~~[1-201](#).  
“Goods”. Section 2-105.  
~~“Honor”. Section 1-201.~~  
“Purchase”. Section 1-201.  
~~“Rights~~[Right](#)”. Section 1-201.

“Value”. Section ~~1-201~~[1-204](#).

### **Section 2-507. Effect of Seller’s Tender; Delivery on Condition.**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Delivery”. Section 1-201.  
“Document of title”. Section 1-201.  
“Goods”. Section 2-105.  
“~~Rights~~[Right](#)”. Section 1-201.  
“Seller”. Section 2-103.

### **Section 2-508. Cure by Seller of Improper Tender or Delivery; Replacement**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Point 2: Section 2-302.  
Point 3: Section 2-511.  
Point 4: Sections ~~1-205~~[1-303](#) and 2-721.

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Conforming”. Section 2-106.  
“Contract”. Section 1-201.  
“Money”. Section 1-201.  
“Notifies”. Section ~~1-201~~[1-202](#).  
“Reasonable time”. Section ~~1-204~~[1-205](#).  
“Seasonably”. Section ~~1-204~~[1-205](#).

“Seller”. Section 2-103.

## Section 2-511. Tender of Payment by Buyer; Payment by Check

\* \* \*

### Official Comment

\* \* \*

4. \* \* \*

The phrase “by check” includes not only the buyer’s own but any check which does not effect a discharge under Article 3 (Section [3-8023-310](#)). Similarly the reason of this subsection should apply and the same result should be reached where the buyer “pays” by sight draft on a commercial firm which is financing him.

5. Under subsection (3) payment by check is defeated if it is not honored upon due presentment. This corresponds to the provisions of article on Commercial Paper. (Section [3-8023-310](#)). But if the seller procures certification of the check instead of cashing it, the buyer is discharged. (Sections [3-4113-409\(d\)](#) and [3-414\(c\)](#)).

6. Where the instrument offered by the buyer is not a payment but a credit instrument such as a note or a check ~~postdated~~ [post-dated](#) by even one day, the seller’s acceptance of the instrument insofar as third parties are concerned, amounts to a delivery on credit and his remedies are set forth in the section on buyer’s insolvency. As between the buyer and the seller, however, the matter turns on the present subsection and the section on conditional delivery and subsequent dishonor of the instrument gives the seller rights on it as well as for breach of the contract for sale.

### Cross References:

Point 1: Sections 2-307, 2-310, 2-320, 2-325, 2-503, 2-513 and 2-609.

Point 2: Sections 2-307, 2-310, 2-319, 2-322, 2-503, 2-504 and 2-513.

Point 3: Section 2-614.

[Point 4: Section 3-310.](#)

Point 5: Article 3, esp. Sections [3-8023-310](#), [3-409](#) and [3-4113-414](#).

Point 6: Sections 2-507, 2-702, and Article 3.

### Definitional Cross References:

“Buyer”. Section 2-103.

“Check”. Section 3-104.

“Dishonor”. Section 3-508.  
“Party”. Section 1-201.  
“Reasonable time”. Section ~~1-204~~[1-205](#).  
“Seller”. Section 2-103.

### **Section 2-512. Payment by Buyer Before Inspection**

\* \* \*

#### **Official Comment**

\* \* \*

4. Clause (b) is concerned with contracts for payment against documents and incorporates the general clarification and modification of the case law contained in the section on excuse of a financing agency. Section ~~5-114~~[5-109](#).

\* \* \*

#### **Cross References:**

Point 4: Article 5.  
Point 5: Section ~~1-207~~[1-308](#).  
Point 6: Section 2-513(3).

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Conform”. Section 2-106.  
“Contract”. Section 1-201.  
“Financing agency”. Section 2-104.  
“Goods”. Section 2-105.  
“Remedy”. Section 1-201.  
“~~Rights~~[Right](#)”. Section 1-201.

### **Section 2-513. Buyer’s Right to Inspection of Goods.**

\* \* \*

#### **Official Comment**

\* \* \*



5. In the case of payment against documents, subsection (3) requires payment before inspection, since shipping documents against which payment is to be made will commonly arrive and be tendered while the goods are still in transit. This Article recognizes no exception in any peculiar case in which the goods happen to arrive before the documents. However, ~~where~~ bywhereby the agreement payment is to await the arrival of the goods, inspection before payment becomes proper since the goods are then “available for inspection.”

\* \* \*

### **Cross References:**

Generally: Sections 2-310 (b), 2-321(3) and 2-606(1)(b).  
Point 1: Section 2-607.  
Point 2: Sections 2-501 and 2-502.  
Point 4: Section 2-715.  
Point 5: Section 2-321(3).  
Point 6: Sections 2-606 to 2-608.  
Point 7: Section ~~1-204~~1-205.  
Point 8: Comment to Section 2-401.  
Point 9: Section 2-316(2)(b).

### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Conform”. Section 2-106.  
“Contract”. Section 1-201.  
“Contract for sale”. Section 2-106.  
“Document of title”. Section 1-201.  
“Goods”. Section 2-105  
“Party”. Section 1-201.  
“Presumed”. Section 1-201.  
“Reasonable time”. Section ~~1-204~~1-205.  
“~~Rights~~Right”. Section 1-201.  
“Seller”. Section 2-103.  
“Send”. Section 1-201.  
“Term”. Section 1-201.

### **Section 2-514. When Documents Deliverable on Acceptance; When on Payment**

\* \* \*

### **Official Comment**

\* \* \*

1. It covers any document against which a draft may be drawn, whatever may be the form of the document, and applies to interpret the action of a seller or consignor insofar as it may affect the rights and duties of any buyer, consignee or financing agency concerned with the paper. Supplementary or corresponding provisions are found in Sections 4-503 and ~~5-112~~[5-108](#).

\* \* \*

#### **Cross References:**

Point 1: See Sections 2-502, 2-505(2), 2-507(2), 2-512, 2-513, 2-607 concerning protection of rights of buyer and seller, and 4-503 and ~~5-112~~[5-108](#) on delivery of documents.

\* \* \*

#### **Section 2-515. Preserving Evidence of Goods in Dispute**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Point 2: Sections 2-513(3), 2-706 and 2-711(2) and Article 5.

Point 3: Sections ~~1-202~~[1-307](#) and ~~1-207~~[1-308](#).

#### **Definitional Cross References:**

“Conform”. Section 2-106.

“Goods”. Section 2-105.

“Notification”. Section ~~1-201~~[1-202](#).

“Party”. Section 1-201.

#### **Section 2-601. Buyer’s Rights on Improper Delivery**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Commercial unit”. Section 2-105.  
“Conform”. Section 2-106.  
“Contract”. Section 1-201.  
“Goods”. Section 2-105.  
“Installment contract”. Section 2-612.  
“~~Rights~~Right”. Section 1-201.

## Section 2-602. Manner and Effect of Rightful Rejection

\* \* \*

### Official Comment

\* \* \*

1. A tender or delivery of goods made pursuant to a contract of sale, even though wholly non-conforming, requires affirmative action by the buyer to avoid acceptance. Under subsection (1), therefore, the buyer is given a reasonable time to notify the seller of his rejection, but without such seasonable notification his rejection is ineffective. The sections of this Article dealing with inspection of goods must be read in connection with the buyer’s reasonable time for action under this subsection. Contract provisions limiting the time for rejection fall within the rule of the section on “Time” and are effective if the time set gives the buyer a reasonable time for discovery of defects. What constitutes a due “notifying” of rejection by the buyer to the seller is defined in Section ~~1-201~~2-202.

\* \* \*

### Cross References:

Point 1: Sections 1-201, ~~1-204(1) and (3)~~1-205, 1-302, 2-512(2), 2-513(1), and 2-606(1)(b).  
Point 2: Section 2-603(1).  
Point 3: Section 2-703.

### Definitional Cross References:

“Buyer”. Section 2-103.  
“Commercial unit”. Section 2-105.  
“Goods”. Section 2-105.  
“Merchant”. Section 2-104.  
“Notifies”. Section ~~1-201~~1-202.  
“Reasonable time”. Section ~~1-204~~1-205.  
“Remedy”. Section 1-201.  
“~~Rights~~Right”. Section 1-201.

“Seasonably”. Section ~~1-204~~[1-205](#).  
“Security interest”. Section 1-201.  
“Seller”. Section 2-103.

### **Section 2-603. Merchant Buyer’s Duties as to Rightfully Rejected Goods**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Point 2: Sections 4-503 and ~~5-1125~~[5-108](#).  
Point 5: Section ~~1-106~~[1-305](#). Compare generally section 2-706.

\* \* \*

### **Section 2-604. Buyer’s Options as to Salvage of Rightfully Rejected Goods**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Notification”. Section ~~1-201~~[1-202](#).  
“Reasonable time”. Section ~~1-204~~[1-205](#).  
“Seller”. Section 2-103.

### **Section 2-605. Waiver of Buyer’s Objections by Failure to Particularize**

\* \* \*

#### **Official Comment**

\* \* \*

**Definitional Cross References:**

- “Between merchants”. Section 2-104.
- “Buyer”. Section 2-103.
- “Seasonably”. Section ~~1-204~~[1-205](#).
- “Seller”. Section 2-103.
- “Writing” and “written”. Section 1-201.

**Section 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach after Acceptance; Notice of Claim or Litigation to Person Answerable Over**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

- Point 1: Section 1-201.
- Point 2: Section 2-608.
- Point 4: Sections ~~1-204~~[1-205](#) and 2-605.
- Point 5: Section 2-318.
- Point 6: Section 2-717.
- Point 7: Sections 2-312 and ~~3-803~~[3-119](#).
- Point 8: Section 1-207.

**Definitional Cross References:**

- “Burden of establishing”. Section 1-201.
- “Buyer”. Section 2-103.
- “Conform”. Section 2-106.
- “Contract”. Section 1-201.
- “Goods”. Section 2-105.
- “Notifies”. Section ~~1-201~~[1-202](#).
- “Reasonable time”. Section ~~1-204~~[1-205](#).
- “Remedy”. Section 1-201.
- “Seasonably”. Section ~~1-204~~[1-205](#).

**Section 2-608. Revocation of Acceptance in Whole or in Part**

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Point 3: Section 2-721.

Point 4: Sections ~~1-204~~[1-205](#), 2-602 and 2-607.

Point 5: Sections 2-605 and 2-607.

Point 7: Section 2-601.

### Definitional Cross References:

“Buyer”. Section 2-103.

“Commercial unit”. Section 2-105.

“Conform”. Section 2-106.

“Goods”. Section 2-105.

“Lot”. Section 2-105.

“Notifies”. Section ~~1-201~~[1-202](#).

“Reasonable time”. Section ~~1-204~~[1-205](#).

“~~Rights~~[Right](#)”. Section 1-201.

“Seasonably”. Section ~~1-204~~[1-205](#).

“Seller”. Section 2-103.

## Section 2-609. Right to Adequate Assurance of Performance

\* \* \*

## Official Comment

\* \* \*

3. \* \* \*

Thus a buyer who falls behind in “his account” with the seller, even though the items involved have to do with separate and legally distinct contracts, impairs the seller’s expectation of due performance. Again, under the same test, a buyer who requires precision parts which he intends to use immediately upon delivery, may have reasonable grounds for insecurity if he discovers that his seller is making defective deliveries of such parts to other buyers with similar needs. Thus, too, in a situation such as arose in *Jay Dreher Corp. ~~oration~~ v. Delco Appliance Corp. ~~oration~~*, 93 F.2d 275 (~~C.C.A.2~~[2d Cir.](#) 1937), where a manufacturer gave a dealer an exclusive franchise for the sale of his product but on two or three occasions breached the exclusive dealing clause, although there was no default in orders, deliveries or payments under the separate sales contract between the parties, the aggrieved dealer would be entitled to suspend

his performance of the contract for sale under the present section and to demand assurance that the exclusive dealing contract would be lived up to. There is no need for an explicit clause tying the exclusive franchise into the contract for the sale of goods since the situation itself ties the agreements together.

\* \* \*

4. \* \* \*

A fact situation such as arose in *Corn Products Refining Co. v. Fasola*, ~~94 N.J.L. 181~~, 109 A. 505 (N.J. 1920) offers illustration both of reasonable grounds for insecurity and “adequate” assurance. In that case a contract for the sale of oils on 30 days’ credit, 2% off for payment within 10 days, provided that credit was to be extended to the buyer only if his financial responsibility was satisfactory to the seller. The buyer had been in the habit of taking advantage of the discount but at the same time that he failed to make his customary 10 day payment, the seller heard rumors, in fact false, that the buyer’s financial condition was shaky. Thereupon, the seller demanded cash before shipment or security satisfactory to him. The buyer sent a good credit report from his banker, expressed willingness to make payments when due on the 30 day terms and insisted on further deliveries under the contract. Under this Article the rumors, although false, were enough to make the buyer’s financial condition “unsatisfactory” to the seller under the contract clause. Moreover, the buyer’s practice of taking the cash discounts is enough, apart from the contract clause, to lay a commercial foundation for suspicion when the practice is suddenly stopped. These matters, however, go only to the justification of the seller’s demand for security, or his “reasonable grounds for insecurity”.

The adequacy of the assurance given is not measured as in the type of “satisfaction” situation affected with intangibles, such as in personal service cases, cases involving a third party’s judgment as final, or cases in which the whole contract is dependent on one party’s satisfaction, as in a sale on approval. Here, the seller must exercise good faith and observe commercial standards. This Article thus approves the statement of the court in *James B. Berry’s Sons Co, of Illinois v. Monark Gasoline & Oil Co., Inc.*, 32 F.2d 74; (~~C.C.A.8~~, 8th Cir. 1929), that the seller’s satisfaction under such a clause must be based upon reason and must not be arbitrary or capricious; and rejects the purely personal “good faith” test of the *Corn Products Refining Co.* case, which held that in the seller’s sole judgment, if for *any* reason he was dissatisfied, he was entitled to revoke the credit. In the absence of the buyer’s failure to take the 2% discount as was his custom, the banker’s report given in that case would have been “adequate” assurance under this Act, regardless of the language of the “satisfaction” clause. However, the seller is reasonably entitled to feel insecure at a sudden expansion of the buyer’s use of a credit term, and should be entitled either to security or to a satisfactory explanation.

\* \* \*

#### Cross References:

Point 3: Section ~~1-203~~1-304.

Point 5: Section 2-611.

Point 6: Sections ~~1-203~~[1-304](#) and ~~1-208~~[1-309](#) and Articles 3 and 9.

### **Definitional Cross References:**

“Aggrieved party”. Section 1-201.

“Between merchants”. Section 2-104.

“Contract”. Section 1-201.

“Contract for sale”. Section 2-106.

“Party”. Section 1-201.

“Reasonable time”. Section ~~1-204~~[1-205](#).

“~~Rights~~[Right](#)”. Section 1-201.

“Writing”. Section 1-201.

### **Section 2-610. Anticipatory Repudiation**

\* \* \*

#### **Official Comment**

\* \* \*

4. After repudiation, the aggrieved party may immediately resort to any remedy he chooses provided he moves in good faith (see Section ~~1-203~~[1-304](#)). Inaction and silence by the aggrieved party may leave the matter open but it cannot be regarded as misleading the repudiating party. Therefore the aggrieved party is left free to proceed at any time with his options under this section, unless he has taken some positive action which in good faith requires notification to the other party before the remedy is pursued.

### **Cross References:**

Point 1: Sections 2-609 and 2-612.

Point 2: Section 2-609.

Point 3: Section 2-612.

Point 4: Section ~~1-203~~[1-304](#).

\* \* \*

### **Section 2-611. Retraction of Anticipatory Repudiation**

\* \* \*

#### **Official Comment**



\* \* \*

**Definitional Cross References:**

“Aggrieved party”. Section 1-201.  
“Cancellation”. Section 2-106.  
“Contract”. Section 1-201.  
“Party”. Section 1-201.  
“~~Rights~~Right”. Section 1-201.

**Section 2-612. “Installment Contract”; Breach**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 2: Sections 2-307 and 2-607.  
Point 3: Section ~~1-203~~1-304.  
Point 5: Sections ~~2-208 and~~ 2-609.  
Point 6: Section 2-610.

**Definitional Cross References:**

“Action”. Section 1-201.  
“Aggrieved party”. Section 1-201.  
“Buyer”. Section 2-103.  
“Cancellation”. Section 2-106.  
“Conform”. Section 2-106.  
“Contract”. Section 1-201.  
“Lot”. Section 2-105.  
“Notifies”. Section ~~1-201~~1-202.  
“Seasonably”. Section ~~1-204~~1-205.  
“Seller”. Section 2-103.

**Section 2-613. Casualty to Identified Goods**

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Buyer”. Section 2-103.  
“Conform”. Section 2-106.  
“Contract”. Section 1-201.  
“Fault”. Section 1-201.  
“Goods”. Section 2-105.  
“Party”. Section 1-201.  
“RightsRight”. Section 1-201.  
“Seller”. Section 2-103.

### Section 2-614. Substituted Performance

\* \* \*

## Official Comment

\* \* \*

1. \* \* \*

This section appears between Section 2-613 on casualty to identified goods and the next section on excuse by failure of presupposed conditions, both of which deal with excuse and complete avoidance of the contract where the occurrence or non-occurrence of a contingency which was a basic assumption of the contract makes the expected performance impossible. The distinction between the present section and those sections lies in whether the failure or impossibility of performance arises in connection with an incidental matter or goes to the very heart of the agreement. The differing lines of solution are contrasted in a comparison of *International Paper Co. v. Rockefeller*, ~~161 App. Div. 180~~, 146 N.Y.S. 371 ([App. Div.](#) 1914) and *Meyer v. Sullivan*, ~~40 Cal. App. 723~~, 181 P. 847 ([Cal. Ct. App.](#) 1919). In the former case a contract for the sale of spruce to be cut from a particular tract of land was involved. When a fire destroyed the trees growing on that tract the seller was held excused since performance was impossible. In the latter case the contract called for delivery of wheat “f.o.b. Kosmos Steamer at Seattle.” The war led to cancellation of that line’s sailing schedule after space had been duly engaged and the buyer was held entitled to demand substituted delivery at the warehouse on the line’s loading dock. Under this Article, of course, the seller would also be entitled, had the market gone the other way, to make a substituted tender in that manner.

\* \* \*

2. The substitution provided in this section as between buyer and seller does not carry over into the obligation of a financing agency under a letter of credit, since such an agency is entitled to performance which is plainly adequate on its face and without need to look into commercial evidence outside of the documents. See Article 5, especially Sections 5-102, ~~5-103~~[5-108](#), [and 5-109](#),~~5-110~~,~~5-114~~.

\* \* \*

## Section 2-615. Excuse by Failure of Presupposed Conditions

\* \* \*

### Official Comment

\* \* \*

4. Increased cost alone does not excuse performance unless the rise in cost is due to some unforeseen contingency which alters the essential nature of the performance. Neither is a rise or a collapse in the market in itself a justification, for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover. But a severe shortage of raw materials or of supplies due to a contingency such as war, embargo, local crop failure, unforeseen shutdown of major sources of supply or the like, which either causes a marked increase in cost or altogether prevents the seller from securing supplies necessary to his performance, is within the contemplation of this section. (See *Ford & Sons, Ltd., v. Henry Leatham & Sons, Ltd.*, 21 Com. Cas. 55 (1915, K.B.D.).)

5. Where a particular source of supply is exclusive under the agreement and fails through casualty, the present section applies rather than the provision on destruction or deterioration of specific goods. The same holds true where a particular source of supply is shown by the circumstances to have been contemplated or assumed by the parties at the time of contracting. (See *Davis Co. v. Hoffmann-LaRoche Chemical Works*, ~~178 App.Div. 855~~, 166 N.Y.S. 179 ([App. Div.](#) 1917) and *International Paper Co. v. Rockefeller*, ~~161 App.Div. 180~~, 146 N.Y.S. 371 ([App. Div.](#) 1914).) There is no excuse under this section, however, unless the seller has employed all due measures to assure himself that his source will not fail. (See *Canadian Industrial Alcohol Co., Ltd., v. Dunbar Molasses Co.*, ~~258 N.Y. 194~~, 179 N.E. 383, ~~80 A.L.R. 1173~~ (N.Y. 1932) and *Washington Mfg. Co. v. Midland Lumber Co.*, ~~113 Wash. 593~~, 194 P. 777 ([Wash.](#) 1921).)

\* \* \*

8. The provisions of this section are made subject to assumption of greater liability by agreement and such agreement is to be found not only in the expressed terms of the contract but in the circumstances surrounding the contracting, in trade usage and the like. Thus the exemptions of this section do not apply when the contingency in question is sufficiently

foreshadowed at the time of contracting to be included among the business risks which are fairly to be regarded as part of the dickered terms, either consciously or as a matter of reasonable, commercial interpretation from the circumstances, (See *Madeirense Do Brasil, S. A. v. Stulman-Emrick Lumber Co.*, 147 F.2d 399 (C.C.A., 2d Cir., 1945).) The exemption otherwise present through usage of trade under the present section may also be expressly negated by the language of the agreement. Generally, express agreements as to exemptions designed to enlarge upon or supplant the provisions of this section are to be read in the light of mercantile sense and reason, for this section itself sets up the commercial standard for normal and reasonable interpretation and provides a minimum beyond which agreement may not go.

\* \* \*

### **Cross References:**

- Point 1: Sections 2-613 and 2-614.
- Point 2: Section ~~1-102~~[1-103](#).
- Point 5: Sections ~~1-203~~[1-304](#) and 2-613.
- Point 6: Sections ~~1-102~~[1-103](#), ~~1-203~~[1-304](#) and 2-609.
- Point 7: Section 2-614.
- Point 8: Sections ~~1-201~~[1-302](#), 2-302 and 2-616.
- Point 9: Sections ~~1-102~~[1-103](#), 2-306 and 2-613.

### **Definitional Cross References:**

- “Between merchants”. Section 2-104.
- “Buyer”. Section 2-103.
- “Contract”. Section 1-201.
- “Contract for sale”. Section 2-106.
- “Good faith”. Section 1-201.
- “Merchant”. Section 2-104.
- “Notifies”. Section ~~1-201~~[1-202](#).
- “Seasonably”. Section ~~1-204~~[1-205](#).
- “Seller”. Section 2-103.

### **Section 2-616. Procedure on Notice Claiming Excuse.**

\* \* \*

### **Official Comment**

\* \* \*

### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Installment contract”. Section 2-612.  
“Notification”. Section ~~1-201~~1-202.  
“Reasonable time”. Section ~~1-204~~1-205.  
“Seller”. Section 2-103.  
“Termination”. Section 2-106.  
“Written”. Section 1-201.

### **Section 2-702. Seller’s Remedies on Discovery of Buyer’s Insolvency**

\* \* \*

#### **Official Comment**

\* \* \*

3. Because the right of the seller to reclaim goods under this section constitutes preferential treatment as against the buyer’s other creditors, subsection (3) provides that such reclamation bars all his other remedies as to the goods involved. ~~As amended 1966.~~

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Buyer in ordinary course of business”. Section 1-201.  
“Contract”. Section 1-201.  
“Good faith”. Section 1-201.  
“Goods”. Section 2-105.  
“Insolvent”. Section 1-201.  
“Person”. Section 1-201.  
“Purchaser”. Section 1-201.  
“Receipt” of goods. Section 2-103.  
“Remedy”. Section 1-201.  
“~~Rights~~Right”. Section 1-201.  
“Seller”. Section 2-103.  
“Writing”. Section 1-201.

### **Section 2-703. Seller’s Remedies in General**

\* \* \*

## Official Comment

\* \* \*

4. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is enforceable by action unless a different effect is specifically prescribed (Section ~~1-106~~[1-305](#)).

### Cross References:

Point 2: Section 2-612.

Point 3: Section 2-325.

Point 4: Section ~~1-106~~[1-305](#).

\* \* \*

### Section 2-704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Aggrieved party”. Section 1-201.

“Conforming”. Section 2-106.

“Contract”. Section 1-201.

“Goods”. Section 2-105

“~~Rights~~[Right](#)”. Section 1-201.

“Seller”. Section 2-103.

### Section 2-705. Seller's Stoppage of Delivery in Transit or Otherwise

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Buyer”. Section 2-103.  
“Contract for sale”. Section 2-106.  
“Document of title”. Section 1-201.  
“Goods”. Section 2-105.  
“Insolvent”. Section 1-201.  
“Notification”. Section ~~1-201~~1-202.  
“Receipt” of goods. Section 2-103.  
“~~Rights~~Right”. Section 1-201.  
“Seller”. Section 2-103.

### **Section 2-706. Seller’s Resale Including Contract for Resale**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Buyer”. Section 2-103.  
“Contract”. Section 1-201.  
“Contract for sale”. Section 2-106.  
“Good faith”. Section ~~2-103~~1-102.  
“Goods”. Section 2-105.  
“Merchant”. Section 2-104.  
“Notification”. Section ~~1-201~~1-202.  
“Person in position of seller”. Section 2-707.  
“Purchase”. Section 1-201.  
“~~Rights~~Right”. Section 1-201.  
“Sale”. Section 2-106.  
“Security interest”. Section 1-201.  
“Seller”. Section 2-103.

### **Section 2-709. Action for the Price**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Point 4: Section ~~1-106~~[1-305](#).

Point 5: Sections 2-501, 2-509, 2-510 and 2-704.

Point 7: Section 2-708.

\* \* \*

### **Section 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods**

\* \* \*

#### **Official Comment**

\* \* \*

3. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is enforceable by action unless a different effect is specifically prescribed (Section ~~1-106~~[1-305](#)).

#### **Cross References:**

Point 1: Sections 2-508, 2-601(c), 2-608, 2-612 and 2-714.

Point 2: Section 2-706.

Point 3: Section ~~1-106~~[1-305](#).

#### **Definitional Cross References:**

“Aggrieved party”. Section 1-201.

“Buyer”. Section 2-103.

“Cancellation”. Section 2-106.

“Contract”. Section 1-201.

“Cover”. Section 2-712.

“Goods”. Section 2-105.

“Notifies”. Section ~~1-201~~[1-202](#).

“Receipt” of goods. Section 2-103.

“Remedy”. Section 1-201.

“Security interest”. Section 1-201.

“Seller”. Section 2-103.

### **Section 2-712. “Cover”; Buyer's Procurement of Substitute Goods**

\* \* \*



## Official Comment

\* \* \*

4. This section does not limit cover to merchants, in the first instance. It is the vital and important remedy for the consumer buyer as well. Both are free to use cover: ~~the domestic or non-merchant consumer is required only to act in normal good faith while the merchant buyer must also observe all reasonable commercial standards of fair dealing in the trade, since this falls within the definition of good faith on his part.~~

### Cross References:

Point 1: Section 2-706.

Point 2: Section ~~1-204~~[1-205](#).

Point 3: Sections 2-713, 2-715 and 2-716.

Point 4: Section ~~1-203~~[1-304](#).

### Definitional Cross References:

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Good faith”. Section ~~2-103~~[1-201](#).

“Goods”. Section 2-105.

“Purchase”. Section 1-201.

“Remedy”. Section 1-201.

“Seller”. Section 2-103.

## Section 2-713. Buyer’s Damages for Non-Delivery or Repudiation

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Point 3: Sections ~~1-106~~[1-305](#), 2-716 and 2-723.

Point 5: Section 2-712.

\* \* \*

## Section 2-714. Buyer’s Damages for Breach in Regard to Accepted Goods

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Buyer”. Section 2-103.  
“Conform”. Section 2-106.  
“Goods”. Section ~~1-201~~[2-105](#).  
“Notification”. Section ~~1-201~~[1-202](#).  
“Seller”. Section 2-103.

### Section 2-715. Buyer’s Incidental and Consequential Damages

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 1: Section 2-608.  
Point 3: Sections ~~1-203~~[1-304](#), 2-615 and 2-719.  
Point 4: Section ~~1-106~~[1-305](#).

#### Definitional Cross References:

“Cover”. Section 2-712.  
“Goods”. Section ~~1-201~~[2-105](#).  
“Person”. Section 1-201.  
“Receipt” of goods. Section 2-103.  
“Seller”. Section 2-103.

### Section 2-716. Buyer’s Right to Specific Performance or Replevin

\* \* \*

### Official Comment

\* \* \*

**Definitional Cross References:**

“Buyer”. Section 2-103.

“Goods”. Section ~~1-201~~[2-105](#).

“~~Rights~~[Right](#)”. Section 1-201.

**Section 2-717. Deduction of Damages From the Price**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Buyer”. Section 2-103.

“Notifies”. Section ~~1-201~~[1-202](#).

**Section 2-718. Liquidation or Limitation of Damages; Deposits**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Aggrieved party”. Section 1-201.

“Agreement”. Section 1-201.

“Buyer”. Section 2-103.

“Goods”. Section 2-105.

“Notice”. Section ~~1-201~~[1-202](#).

“Party”. Section 1-201.

“Remedy”. Section 1-201.

“Seller”. Section 2-103.

“Term”. Section 1-201.

**Section 2-720. Effect of “Cancellation” or “Rescission” on Claims for Antecedent Breach**

\* \* \*

**Official Comment**

\* \* \*

**Cross Reference:**

Section ~~1-107~~[1-306](#).

\* \* \*

**Section 2-722. Who Can Sue Third Parties for Injury to Goods**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Action”. Section 1-201.  
“Buyer”. Section 2-103.  
“Contract for sale”. Section 2-106.  
“Goods”. Section 2-105.  
“Party”. Section 1-201.  
“~~Rights~~[Right](#)”. Section 1-201.  
“Security interest”. Section 1-201.

**Section 2-723. Proof of Market Price: Time and Place**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Action”. Section 1-201.

“Aggrieved party”. Section 1-201.

“Goods”. Section 2-105.

“Notifies”. Section ~~1-201~~1-202.

“Party”. Section 1-201.

“Reasonable time”. Section ~~1-204~~1-205.

“Usage of trade”. Section ~~1-205~~1-303.

## ARTICLE 2A – LEASES

### Section 2A-101. Short Title

\* \* \*

### Official Comment

\* \* \*

### Statutory Analogue:

\* \* \*

**Issues:** The drafting committee then identified and resolved several issues critical to codification:

**Scope:** The scope of the Article was limited to leases (Section 2A-102). There was no need to include ~~leases intended as security, i.e.,~~ security interests ~~disguised as~~ in the form of leases, as they are adequately treated in Article 9. Further, even if security interests in the form of leases ~~intended as security~~ were included, the need to preserve the distinction would remain, as policy suggests treatment significantly different from that accorded leases.

**Definition of Lease:** Lease was defined to exclude security interests in the form of leases ~~intended as security~~ (Section 2A-103(1)(j)). Given the litigation to date a revised definition of security interest was suggested for inclusion in the Act. See pre-2001 Section 1-201(37). Section 1-203 now sharpens the distinction between leases and security interests disguised as leases.

**Filing:** Except to the extent necessary to ensure priority in fixtures (Section 2A-309), ~~T~~he lessor was not required to file a financing statement against the lessee or take any other action to protect the lessor's interest in the goods (Section 2A-301). The refined definition of security interest will more clearly signal the need to file to potential lessors of goods. Those lessors who are concerned will file a protective financing statement (Section 9-505).

\* \* \*

**Consumer Leases:** Many leasing transactions involve parties subject to consumer protection statutes or decisions. To avoid conflict with those laws this Article is subject to them to the extent provided in ~~(Section 2A-104(1)(c) and (2)).~~ Further, certain consumer protections have been incorporated in the Article.

\* \* \*

**Remedies:** The Article has not only provided for lessor's remedies upon default by the

lessee (Sections 2A-523 through ~~2A-531~~[2A-532](#)), but also for lessee’s remedies upon default by the lessor (Sections 2A-508 through 2A-522). This is a significant departure from Article 9, which provides remedies only for the secured party upon default by the debtor. This difference is compelled by the bilateral nature of the obligations between the parties to a lease.

\* \* \*

### **Relationship of Article 2A to Other Articles:**

\* \* \*

This codification was greatly influenced by the fundamental tenet of the common law as it has developed with respect to leases of goods: freedom of the parties to contract. Note that, like all other Articles of this Act, the principles of construction and interpretation contained in Article 1 are applicable throughout Article 2A (Section 2A-103(4)). These principles include the ability of the parties to vary the effect of the provisions of Article 2A, subject to certain limitations including those that relate to the obligations of good faith, diligence, reasonableness and care (Section ~~1-102(3)~~[1-302\(b\)](#)). Consistent with those principles no negative inference is to be drawn by the episodic use of the phrase “unless otherwise agreed” in certain provisions of Article 2A. Section ~~1-102(4)~~[1-302\(c\)](#). Indeed, the contrary is true, as the general rule in the Act, including this Article, is that the effect of the Act’s provisions may be varied by agreement. Section ~~1-102(3)~~[1-302\(a\)](#). This conclusion follows even where the statutory analogue contains the phrase and the correlative provision in Article 2A does not.

### **Section 2A-102. Scope**

\* \* \*

#### **Official Comment**

\* \* \*

1. \* \* \*

To achieve that end it was necessary to provide that this Article applies to any transaction, regardless of form, that creates a lease. Since lease is defined as a transfer of ~~an~~ [interest in the right to possession and use of](#) goods (Section 2A-103(1)(j)) and goods is defined to include fixtures (Section 2A-103(1)(h)), application is limited to the extent the transaction relates to goods, including fixtures. Further, since the definition of lease does not include a sale (Section 2-106(1)) or retention or creation of a security interest (Section ~~1-201(37)~~[1-201\(b\)\(35\)](#)), application is further limited; sales and security interests are governed by other Articles of this Act.

2. In recognition of the diversity of the transactions to be governed, the sophistication of

many of the parties to these transactions, and the common law tradition as it applies to the bailment for hire or lease, freedom of contract has been preserved. [Ronald DeKoven](#), Proceedings After Default by the Lessee Under a True Lease of Equipment, in 1C [Peter F. Coogan](#), [William E. Hogan](#), [Detlev F. Vagts](#), *Secured Transactions Under the Uniform Commercial Code*, § 29B.02[2] (1986). Thus, despite the extensive regulatory scheme established by this Article, the parties to a lease will be able to create private rules to govern their transaction. Sections 2A-103(4) and ~~1-102(3)~~[1-302\(a\)](#). However, there are special rules in this Article governing consumer leases, as well as other state and federal statutes, that may further limit freedom of contract with respect to consumer leases.

3. A court may apply this Article by analogy to any transaction, regardless of form, that creates a lease of personal property other than goods, taking into account the expressed intentions of the parties to the transaction and any differences between a lease of goods and a lease of other property. Such application has precedent as the provisions of the Article on Sales (Article 2) have been applied by analogy to leases of goods. *E.g.*, [William D. Hawkland](#), *The Impact of the Uniform Commercial Code on Equipment Leasing*, 1972 Ill. L.F. 446; [Daniel E. Murray](#), *Under the Spreading Analogy of Article 2 of the Uniform Commercial Code*, 39 Fordham L. Rev. 447 (1971). Whether such application would be appropriate for other bailments of personal property, gratuitous or for hire, should be determined by the facts of each case. *See Mieske v. Bartell Drug Co.*, ~~92 Wash.2d 40, 46-48~~, 593 P.2d 1308, 1312 ([Wash.](#) 1979).

\* \* \*

#### **Cross References:**

Sections ~~1-102(3)~~[1-103\(b\)](#), [1-302\(a\)](#), ~~1-201(37)~~[1-201\(b\)\(35\)](#), ~~Article 2, esp. Section 2-106(1), and Sections 2A-103(1)(g), (h), 2A-103(1)and, (j), and 2A-103(4), 2A-209, 2A-212, 2A-213, and 2A-407.~~

#### **Definitional Cross Reference:**

[“Finance lease”](#). [Section 2A-103\(1\)\(g\)](#)  
“Lease”. [Section 2A-103\(1\)\(j\)](#).

#### **Section 2A-103. Definitions and Index of Definitions**

\* \* \*

#### **Official Comment**

\* \* \*

(e) “Consumer lease”. New. This Article includes a subset of rules that applies only to consumer leases. Sections 2A-106, 2A-108(2), 2A-108(4), 2A-109(2), 2A-221([b](#)), 2A-309([5](#))([a](#)),



2A-406(1)(b), 2A-407, 2A-504(3)(b), and 2A-516(3)(b).

\* \* \*

This definition is modeled after the definition of consumer lease in the Consumer Leasing Act, 15 U.S.C. § 1667 (1982), and in the Unif. Consumer Credit Code § 1.301(14), ~~7A U.L.A. 43 (1974)~~. However, this definition of consumer lease differs from its models in several respects: the lessor can be a person regularly engaged either in the business of leasing or of selling goods, the lease need not be for a term exceeding four months, a lease primarily for an agricultural purpose is not covered, and whether there should be a limitation by dollar amount and its amount is left up to the individual states.

\* \* \*

(f) “Fault”. Section 1-201(b)(17).

(g) “Finance Lease”. \* \* \*

A finance lease is the product of a ~~three-party~~ three-party transaction. The supplier manufactures or supplies the goods pursuant to the lessee’s specification, perhaps even pursuant to a purchase order, sales agreement or lease agreement between the supplier and the lessee. After the prospective finance lease is negotiated, a purchase order, sales agreement, or lease agreement is entered into by the lessor (as buyer or prime lessee) or an existing order, agreement or lease is assigned by the lessee to the lessor, and the lessor and the lessee then enter into a lease or sublease of the goods. Due to the limited function usually performed by the lessor, the lessee looks almost entirely to the supplier for representations, covenants and warranties. If a manufacturer’s warranty carries through, the lessee may also look to that. Yet, this definition does not restrict the lessor’s function solely to the supply of funds; if the lessor undertakes or performs other functions, express warranties, covenants and the common law will protect the lessee.

This definition focuses on the transaction, not the status of the parties; to avoid confusion it is important to note that in other contexts, *e.g.*, tax and accounting, the term finance lease has been used to connote different types of lease transactions, including leases that are disguised secured transactions. Michael D. Rice, *Equipment Financing*, 62-71 (1981). A lessor who is a merchant with respect to goods of the kind subject to the lease may be a lessor under a finance lease. Many leases that are leases back to the seller of goods (Section 2A-308(3)) will be finance leases. This conclusion is easily demonstrated by a hypothetical. Assume that B has bought goods from C pursuant to a sales contract. After delivery to and acceptance of the goods by B, B negotiates to sell the goods to A and simultaneously to lease the goods back from A, on terms and conditions that, we assume, will qualify the transaction as a lease. Section 2A-103(1)(j). In documenting the sale and lease back, B assigns the original sales contract between B, as buyer, and C, as seller, to A. A review of these facts leads to the conclusion that the lease from A to B qualifies as a finance lease, as all three conditions of the definition are satisfied. Subparagraph (i) is satisfied as A, the lessor, had nothing to do with the selection, manufacture, or supply of the

equipment. Subparagraph (ii) is satisfied as A, the lessor, bought the equipment at the same time that A leased the equipment to B, which certainly is in connection with the lease. Finally, subparagraph (iii)(A) is satisfied as A entered into the sales contract with B at the same time that A leased the equipment back to B. B, the lessee, will have received a copy of the sales contract in a timely fashion.

\* \* \*

Pursuant to the Uniform Commercial Code Amendments (2022) ~~(2022 Amendments)~~, some references in this Article to the terms “writing,” “writings,” or “written” have been changed to refer to a “record.” These changes are made in provisions where an affected party may be assumed to have assented to the use of a record that is not a writing. For example, Section 2A-201 involves a record signed by an affected party and Section 2A-202 refers to a record intended by parties to be a final expression of their agreement. Where such references remain in this Article, the use by parties of a record other than a writing may be given effect for purposes of this Article under law other than the Uniform Commercial Code, such as the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., and the Uniform Electronic Transactions Act.

\* \* \*

(j) “Lease”. New. There are several reasons to codify the law with respect to leases of goods. An analysis of the case law as it applies to leases of goods suggests at least several significant issues to be resolved by codification. First and foremost is the definition of a lease. It is necessary to define lease to determine whether a transaction creates a lease or a security interest disguised as a lease. If the transaction creates a security interest disguised as a lease, the transaction will be governed by the Article on Secured Transactions (Article 9) and the lessor will be required to file a financing statement or take other action to perfect its interest in the goods against third parties. There is no such requirement with respect to leases under the common law and, except with respect to leases of fixtures (Section 2A-309), this Article imposes no such requirement. Yet the distinction between a lease and a security interest disguised as a lease is not clear from the case law at the time of the promulgation of this Article. [Ronald DeKoven](#), *Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision*, 12 U.S.F. L. Rev. 257 (1978).

At common law a lease of personal property is a bailment for hire. While there are several definitions of bailment for hire, all require a thing to be let and a price for the letting. Thus, in modern terms and as provided in this definition, a lease is created when the lessee agrees to furnish consideration for the right to the possession and use of goods over a specified period of time. [Charles W. Mooney](#), *Personal Property Leasing: A Challenge*, 36 Bus. Law. 1605, 1607 (1981). Further, a lease is neither a sale (Section 2-106(1)) nor a retention or creation of a security interest (Section 1-201(b)(35) and 1-203). Due to extensive litigation to distinguish true leases from security interests, an amendment to former Section 1-201(37) (now codified as Section 1-203) was promulgated with this Article to create a sharper distinction.

This section as well as Section 1-203 must be examined to determine whether the transaction in question creates a lease or a security interest. The following hypotheticals indicate the ~~perimeters~~-parameters of the issue. Assume that A has purchased a number of copying machines, new, for \$1,000 each; the machines have an estimated useful economic life of three years. A advertises that the machines are available to rent for a minimum of one month and that the monthly rental is \$100.00. A intends to enter into leases where A provides all maintenance, without charge to the lessee. Further, the lessee will rent the machine, month to month, with no obligation to renew. At the end of the lease term the lessee will be obligated to return the machine to A's place of business. This transaction qualifies as a lease under the first ~~half~~-clause of the definition, for the transaction includes a transfer by A to a prospective lessee of possession and use of the machine for a stated term, month to month. The machines are goods (Section 2A-103(1)(h)). The lessee is obligated to pay consideration in return, \$100.00 for each month of the term.

However, the second half of the definition provides that a sale or a security interest is not a lease. Since there is no passing of title, there is no sale. Sections 2A-103(3) and 2-106(1). Under pre-Act security law this transaction would have created a bailment for hire or a true lease and not a conditional sale. *Da Rocha v. Macomber*, ~~330 Mass. 611, 614-15~~, 116 N.E.2d 139, 142 (Mass. 1953). Under Section 1-203, the same result would follow. While the lessee is obligated to pay rent for the ~~one month~~one-month term of the lease, one of the other four conditions of Section 1-203(b) must be met and none is. The term of the lease is one month and the economic life of the machine is 36 months; thus, Section 1-203(b)(1) is not now satisfied. Considering the amount of the monthly rent, absent economic duress or coercion, the lessee is not bound either to renew the lease for the remaining economic life of the goods or to become the owner. If the lessee did lease the machine for 36 months, the lessee would have paid the lessor \$3,600 for a machine that could have been purchased for \$1,000; thus, Section 1-203(b)(2) is not satisfied. Finally, there are no options; thus, subparagraphs (3) and (4) of Section 1-203(b) are not satisfied. This transaction creates a lease, not a security interest. However, with each renewal of the lease the facts and circumstances at the time of each renewal must be examined to determine if that conclusion remains accurate, as it is possible that a transaction that first creates a lease, later creates a security interest.

\* \* \*

## Section 2A-104. Leases Subject to Other Law

\* \* \*

### Official Comment

\* \* \*

2. \* \* \*

An illustration of a statute of the United States that governs consumer leases is the Consumer Leasing Act, 15 U.S.C. §§ 1667–1667(e) (1982) and its implementing regulation, Regulation M, 12 C.F.R. § 213 (1986); the statute mandates disclosures of certain lease terms, delimits the liability of a lessee in leasing personal property, and regulates the advertising of lease terms. An illustration of a state statute that governs consumer leases and which if adopted in the enacting state prevails over this Article is the Uniform Consumer Credit Code, which includes many provisions similar to those of the Consumer Leasing Act, e.g. Unif. Consumer Credit Code §§ 3.202, 3.209, 3.401, ~~7A U.L.A. 108-09, 115, 125~~ (1974), as well as provisions in addition to those of the Consumer Leasing Act, e.g., Unif. Consumer Credit Code §§ 5.109–5.111, ~~7A U.L.A. 171-76~~ (1974) (the right to cure a default). Such statutes may define consumer lease so as to govern transactions within and without the definition of consumer lease under this Article.

3. Under subsection (2), subject to certain limited exclusions, in case of conflict a statute or a decision described in subsection (1) prevails over this Article. For example, a provision like Unif. Consumer Credit Code § 5.112, ~~7A U.L.A. 176~~ (1974), limiting self-help repossession, prevails over Section 2A-525(3). A consumer protection decision rendered after the effective date of this Article may supplement its provisions. For example, in relation to Article 9 a court might conclude that an acceleration clause may not be enforced against an individual debtor after late payments have been accepted unless a prior notice of default is given. To the extent the decision establishes a general principle applicable to transactions other than secured transactions, it may supplement Section 2A-502.

4. Consumer protection in lease transactions is primarily left to other law. However, several provisions of this Article do contain special rules that may not be varied by agreement in the case of a consumer lease. *E.g.*, Sections 2A-106, ~~2A-108~~ 2A-108(2), and 2A-109(2). Were that not so, the ability of the parties to govern their relationship by agreement together with the position of the lessor in a consumer lease too often could result in a one-sided lease agreement.

\* \* \*

#### **Cross References:**

Sections 2A-103(1)(e), 2A-105, 2A-106, ~~2A-108~~ 2A-108(2), 2A-109(2), 2A-304(3), 2A-305(3), 2A-502, and 2A-525(3).

\* \* \*

#### **Section 2A-105. Territorial Application of Article to Goods Covered by Certificate of Title**

\* \* \*

### **Official Comment**

\* \* \*

**Changes:**

Substantially revised. The provisions of the last sentence of former Section 9-103(2)(b) were not incorporated as they are superfluous in this context. The provisions of former Section 9-103(2)(d) were not incorporated because the problems dealt with are adequately addressed by this section and Sections 2A-304(3) and [2A-305\(3\)](#).

\* \* \*

**Cross References:**

Sections [2A-304\(3\)](#), [and 2A-305\(3\)](#); ~~former Sections 9-103(2)(b) and 9-103(2)(d) (now codified as Sections 9-303, [and 9-316\(d\)](#), and [9-337](#)).~~

\* \* \*

**Section 2A-106. Limitation on Power of Parties to Consumer Lease to Choose Applicable Law and Judicial Forum**

\* \* \*

**Official Comment**

**Uniform Statutory Source:** Unif. Consumer Credit Code § 1.201(8); ~~7A U.L.A. 36 (1974)~~.

\* \* \*

**Definitional Cross References:**

“Consumer lease”. Section 2A-103(1)(e).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lessee”. Section 2A-103(1)(n).  
“Goods”. Section 2A-103(1)(h).  
“Party”. Section ~~1-201(29)~~ [1-201\(b\)\(26\)](#).

**Section 2A-107. Waiver or Renunciation of Claim or Right After Default**

\* \* \*

**Official Comment**

**Uniform Statutory Source:** [Former](#) Section 1-107.

**Changes:**

1. Revised to reflect leasing practices and terminology. ~~This clause~~ [The prior statement](#) is used throughout the official comments to this Article to indicate the scope of change in the provisions of the Uniform Statutory Source included in the section; these changes range from one extreme, *e.g.*, a significant difference in practice (a warranty as to merchantability is not implied in a finance lease (Section 2A-212)) to the other extreme, *e.g.*, a modest difference in style or terminology (the transaction governed is a lease not a sale (Section 2A-103<sup>\*</sup>)).

\* \* \*

**Cross References:**

Sections 2A-103<sup>\*</sup> and 2A-212.

**Definitional Cross References:**

“Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).

“~~Rights~~[Right](#)”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

“[Record](#)”, Section [1-201\(b\)\(31\)](#).

“Signed”. Section ~~1-201(39)~~[1-201\(b\)\(37\)](#).

“~~Written~~”. Section ~~1-201(46)~~.

~~—————<sup>\*</sup> *Previous incorrect cross reference corrected by Permanent Editorial Board action November 1992.*~~

**Section 2A-108. Unconscionability**

\* \* \*

**Official Comment**

**Uniform Statutory Source:** Section 2-302 and Unif. Consumer Credit Code § 5.108, ~~7A U.L.A.~~ ~~167-69~~ (1974).

**Changes:**

Subsection (1) is taken almost verbatim from the provisions of Section 2-302(1). Subsection (2) is suggested by the provisions of Unif. Consumer Credit Code § 5.108(1), (2), ~~7A U.L.A.~~ ~~167~~ (1974). Subsection (3), taken from the provisions of Section 2-302(2), has been expanded to cover unconscionable conduct. Unif. Consumer Credit Code § 5.108(3), ~~7A U.L.A.~~ ~~167~~ (1974). The provision for the award of attorney’s fees to consumers, subsection (4), covers

unconscionability under subsection (1) as well as (2). Subsection (4) is modeled on the provisions of Unif. Consumer Credit Code § 5.108(6), ~~7A U.L.A. 169~~ (1974).

**Purposes:**

Subsections (1) and (3) of this section apply the concept of unconscionability reflected in the provisions of Section 2-302 to leases. *See Dillman & Assocs. v. Capitol Leasing Co.*, ~~110 Ill.App.3d 335, 342,~~ 442 N.E.2d 311, 316 (Ill. App. Ct. 1982). Subsection (3) omits the adjective “commercial” found in subsection 2-302(2) because subsection (3) is concerned with all leases and the relevant standard of conduct is determined by the context.

The balance of the section is modeled on the provisions of Unif. Consumer Credit Code § 5.108, ~~7A U.L.A. 167-69~~ (1974). Thus subsection (2) recognizes that a consumer lease or a clause in a consumer lease may not itself be unconscionable but that the agreement would never have been entered into if unconscionable means had not been employed to induce the consumer to agree. To make a statement to induce the consumer to lease the goods, in the expectation of invoking an integration clause in the lease to exclude the statement’s admissibility in a subsequent dispute, may be unconscionable. Subsection (2) also provides a consumer remedy for unconscionable conduct, such as using or threatening to use force or violence, in the collection of a claim arising from a lease contract. These provisions are not exclusive. The remedies of this section are in addition to remedies otherwise available for the same conduct under other law, for example, an action in tort for abusive debt collection or under another statute of this State for such conduct. The reference to appropriate relief in subsection (2) is intended to foster liberal administration of this remedy. Sections 2A-103(4) and ~~1-106(1)~~1-305.

\* \* \*

**Cross References:**

Sections ~~1-106(1)~~1-305, 2-302, and 2A-103(4).

**Definitional Cross References:**

- “Action”. Section ~~1-201(1)~~1-201(b)(1).
- “Consumer lease”. Section 2A-103(1)(e).
- “Lease contract”. Section 2A-103(1)(l).
- “Lessee”. Section 2A-103(1)(n).
- “Party”. Section ~~1-201(29)~~1-201(b)(26).

**Section 2A-109. Option to Accelerate at Will**

\* \* \*

**Uniform Statutory Source:** [Former](#) Section 1-208 and Unif. Consumer Credit Code § 5.109(2); ~~7A U.L.A. 171~~ (1974).

**Purposes:**

Subsection (1) reflects modest changes in style to the provisions of the first sentence of [former](#) Section 1-208.

Subsection (2), however, reflects a significant change in the provisions of the second sentence of [former](#) Section 1-208 by creating a new rule with respect to a consumer lease. A lease provision allowing acceleration at the will of the lessor or when the lessor deems itself insecure is of critical importance to the lessee. In a consumer lease it is a provision that is not usually agreed to by the parties but is usually mandated by the lessor. Therefore, where its invocation depends not on specific criteria but on the discretion of the lessor, its use should be regulated to prevent abuse. Subsection (1) imposes a duty of good faith upon its exercise. Subsection (2) shifts the burden of establishing good faith to the lessor in the case of a consumer lease, but not otherwise.

**Cross Reference:**

Section [Former](#) 1-208 [\(now codified as Section 1-309\)](#).

**Definitional Cross References:**

“Burden of establishing”. Section ~~1-201(8)~~ [1-201\(b\)\(8\)](#).

“Consumer lease”. Section 2A-103(1)(e).

“Good faith”. ~~Sections 1-201(19) and 2-103(1)(b)~~ [Section 1-201\(b\)\(20\)](#).

“Party”. Section ~~1-201(29)~~ [1-201\(b\)\(26\)](#).

“Term”. Section ~~1-201(42)~~ [1-201\(b\)\(40\)](#).

**Section 2A-201. Statute of Frauds**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Action”. Section ~~1-201(1)~~ [1-201\(b\)\(1\)](#).

“[Agreed Agreement](#)”. Section ~~1-201(3)~~ [1-201\(b\)\(3\)](#).

“Buying”. Section 2A-103(1)(a).



“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notice”. Section ~~1-201(25)~~[1-202\(a\)](#).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Record”. [Section 1-201\(b\)\(31\)](#)  
“Sale”. Section 2-106(1).  
“Signed”. Section ~~1-201(39)~~[1-201\(b\)\(37\)](#).  
“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).  
~~“Writing”. Section 1-201(46).~~

## Section 2A-202. Final Expression: Parol or Extrinsic Evidence

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Course of dealing”. Section ~~1-205~~[1-303\(b\)](#).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Record”. [Section 1-201\(b\)\(31\)](#).  
“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).  
“Usage of trade”. Section ~~1-205~~[1-303\(c\)](#).  
~~“Writing”. Section 1-201(46).~~

## Section 2A-203. Seals Inoperative

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Lease contract”. Section 2A-103(1)(l ).  
~~“Writing”. Section 1-201(46)~~[”Record”. Section 1-201\(b\)\(31\)](#).

## Section 2A-204. Formation in General

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).

“Lease contract”. Section 2A-103(1)(l).

“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).

“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).

“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).

## Section 2A-205. Firm Offers

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Merchant”. Section 2-104(1).

“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).

“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).

“Record”. Section [1-201\(b\)\(31\)](#)

“Signed”. Section ~~1-201(39)~~[1-201\(b\)\(37\)](#).

“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).

~~“Writing”. Section 1-201(46).~~

## Section 2A-206. Offer and Acceptance in Formation of Lease Contract

\* \* \*

### Official Comment

\* \* \*

**Definitional Cross References:**

“Lease contract”. Section 2A-103(1)(l).

“Notifies”. Section ~~1-201(26)~~1-202(d).

“Reasonable time”. Section ~~1-204(1) and (2)~~1-205(a).

**Section 2A-208. Modification, Rescission and Waiver**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreement”. Section ~~1-201(3)~~1-201(b)(3).

“Between merchants”. Section 2-104(3).

“Lease agreement”. Section 2A-103(1)(k).

“Lease contract”. Section 2A-103(1)(l).

“Merchant”. Section 2-104(1).

“Notification”. Section ~~1-201(26)~~1-202(d).

“Party”. Section ~~1-201(29)~~1-201(b)(26).

“Record”. Section 1-201(b)(31)

“Signed”. Section ~~1-201(39)~~1-201(b)(37).

“Term”. Section ~~1-201(42)~~1-201(b)(40).

~~“Writing”. Section 1-201(46).~~

**Section 2A-209. Lessee Under Finance Lease as Beneficiary of Supply Contract**

\* \* \*

**Official Comment**

\* \* \*

**Changes:** This section is modeled on former Section 9-318 (now codified as Sections 9-404 through 9-406), the Restatement (Second) of Contracts §§ 302–315 (1981), and leasing practices. See *Earman Oil Co. v. Burroughs Corp.*, 625 F.2d 1291, 1296-97 (5th Cir. 1980).

## Purposes:

1. The function performed by the lessor in a finance lease is extremely limited. Section 2A-103(1)(g). The lessee looks to the supplier of the goods for warranties and the like or, in some cases as to warranties, to the manufacturer if a warranty made by that person is passed on. That expectation is reflected in subsection (1), which is self-executing. As a matter of policy, the operation of this provision may not be excluded, modified or limited; however, an exclusion, modification, or limitation of any term of the supply contract or warranty, including any with respect to rights and remedies, and any defense or claim such as a statute of limitations, effective against the lessor as the acquiring party under the supply contract, is also effective against the lessee as the beneficiary designated under this provision. For example, the supplier is not precluded from excluding or modifying an express or implied warranty under a supply contract. Sections 2-312(2) and 2-316, or Section 2A-214. Further, the supplier is not precluded from limiting the rights and remedies of the lessor and from liquidating damages. Sections 2-718 and 2-719 or Sections 2A-503 and 2A-504. If the supply contract excludes or modifies warranties, limits remedies, or liquidates damages with respect to the lessor, such provisions are enforceable against the lessee as beneficiary. Thus, only selective discrimination against the beneficiaries designated under this section is precluded, i.e., exclusion of the supplier's liability to the lessee with respect to warranties made to the lessor. This section does not affect the development of other law with respect to products liability.

2. Enforcement of this benefit is by action. Sections 2A-103(4) and ~~1-106(2)~~[1-305](#).

\* \* \*

## Cross References:

Sections [1-305\(b\)](#), [2-312\(2\)](#), [2-316](#), [2-318](#), [2-718](#), [2-719](#), 2A-103(1)(g), [2A-103\(4\)](#), [2A-214](#), [2A-216](#), 2A-407, [2A-503](#), [2A-504](#), 9-404, 9-405, and 9-406.

## Definitional Cross References:

“Action”. Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Leasehold interest”. Section 2A-103(1)(m).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notice”. Section ~~1-201(25)~~[1-202\(a\)](#).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Supply contract”. Section 2A-103(1)(y).  
“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).

## Section 2A-210. Express Warranties

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

All of the express and implied warranties of the Article on Sales (Article 2) are included in this Article, revised to reflect the differences between a sale of goods and a lease of goods. Sections 2A-210 through 2A-216. The lease of goods is sufficiently similar to the sale of goods to justify this decision. [William D. Hawkland](#), *The Impact of the Uniform Commercial Code on Equipment Leasing*, 1972 Ill. L.F. 446, 45 9-60. Many state and federal courts have reached the same conclusion.

\* \* \*

#### Cross References:

~~Article 2, esp.~~ Section [2-313](#); and ~~Sections~~ 2A-210 through 2A-216.

#### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).

“Goods”. Section 2A-103(1)(h).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-211. Warranties Against Interference and Against Infringement; Lessee’s Obligation Against Infringement

\* \* \*

### Official Comment

\* \* \*

#### Changes:

This section is modeled on the provisions of Section 2-312, with modifications to reflect the limited interest transferred by a lease contract and the total interest transferred by a sale.

Section 2-312(2), which is omitted here, is incorporated in Section 2A-214. The warranty of quiet possession was abolished with respect to sales of goods. Section 2-312 ~~official comment~~ [Comment 1](#). Section 2A-211(1) reinstates the warranty of quiet possession with respect to leases. Inherent in the nature of the limited interest transferred by the lease – the right to possession and use of the goods – is the need of the lessee for protection greater than that afforded to the buyer. Since the scope of the protection is limited to claims or interests that arose from acts or omissions of the lessor, the lessor will be in position to evaluate the potential cost, certainly a far better position than that enjoyed by the lessee. Further, to the extent the market will allow, the lessor can attempt to pass on the anticipated additional cost to the lessee in the guise of higher rent.

### **Purposes:**

General language was chosen for subsection (1) that expresses the essence of the lessee’s expectation: with an exception for infringement and the like, no person holding a claim or interest that arose from an act or omission of the lessor will be able to interfere with the lessee’s use and enjoyment of the goods for the lease term. Subsection (2), like other similar provisions in later sections, excludes the finance lessor from extending this warranty; with few exceptions (Sections 2A-210 and 2A-211(1)), the lessee under a finance lease is to look to the supplier for warranties and the like or, in some cases as to warranties, to the manufacturer if a warranty made by that person is passed on. Subsections (2) and (3) are derived from Section 2-312(3). These subsections, as well as the analogue, should be construed so that applicable principles of law and equity supplement their provisions. Sections 2A-103(4) and 1-103([b](#)).

### **Cross References:**

Sections [1-103\(b\)](#), 2-312, ~~2-312(1), 2-312(2), 2-312-official comment 1,~~ [2A-103\(4\)](#), 2A-210, ~~2A-211(1)~~ and 2A-214.

### **Definitional Cross References:**

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l ).  
“Leasehold interest”. Section 2A-103(1)(m).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Merchant”. Section 2-104(1).  
“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).  
“Supplier”. Section 2A-103(1)(x).

## **Section 2A-212. Implied Warranty of Merchantability**

\* \* \*

### Official Comment

\* \* \*

#### Changes:

Revised to reflect leasing practices and terminology. *E.g.*, *Glenn Dick Equip. Co. v. Galey Constr., Inc.*, ~~97 Idaho 216, 225~~, 541 P.2d 1184, 1193 ([Idaho](#) 1975) (implied warranty of merchantability (Article 2) extends to lease transactions).

#### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Course of dealing”. Section ~~1-205~~[1-303\(b\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Fungible [goods](#)”. Section ~~1-201(17)~~[1-201\(b\)\(18\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessor”. Section 2A-103(1)(p).  
“Merchant”. Section 2-104(1).  
“Usage of trade”. Section ~~1-205~~[1-303\(c\)](#).

### Section 2A-213. Implied Warranty of Fitness for Particular Purpose

\* \* \*

### Official Comment

\* \* \*

#### Changes:

Revised to reflect leasing practices and terminology. *E.g.*, *All-States Leasing Co. v. Bass*, ~~96 Idaho 873, 879~~, 538 P.2d 1177, 1183 ([Idaho](#) 1975) (implied warranty of fitness for a particular purpose (Article 2) extends to lease transactions).

#### Definitional Cross References:

“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).

“Knows”. Section ~~1-201(25)~~[1-202\(b\)](#).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).

## Section 2A-214. Exclusion or Modification of Warranties

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

[Sections 1-201\(b\)\(10\)](#), ~~Article 2, esp. Sections 2-312(2), and 2-316, and Sections 2A-202, 2A-211, 2A-503,~~ and 2A-504.

#### Definitional Cross References:

“Conspicuous”. Section ~~1-201(10)~~[1-201\(b\)\(10\)](#).  
“Course of dealing”. Section ~~1-205~~[1-303\(b\)](#).  
“Fault”. Section 2A-103(1)(f).  
“Goods”. Section 2A-103(1)(h).  
“Knows”. Section ~~1-201(25)~~[1-202\(b\)](#).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).  
“Usage of trade”. Section ~~1-205~~[1-303\(c\)](#).  
“Writing”. Section ~~1-201(46)~~[1-201\(b\)\(43\)](#).

## Section 2A-215. Cumulation and Conflict of Warranties Express or Implied

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross Reference:

“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).



## Section 2A-216. Third-Party Beneficiaries of Express and Implied Warranties

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

This Article does not purport to change the development of the relationship of the common law, with respect to products liability, including strict liability in tort (as restated in Restatement (Second) of Torts, § 402A (1965)), to the provisions of this Act. *Compare Cline v. Prowler Indus. of Maryland*, 418 A.2d 968 (Del.1980) and *Hawkins Constr. Co. v. Matthews Co.*, ~~190 Neb. 546~~, 209 N.W.2d 643 ([Neb.](#) 1973) with *Dippel v. Sciano*, ~~37 Wis.2d 443~~, 155 N.W.2d 55 ([Wis.](#) 1967).

#### Cross References:

~~Article 2, esp. Sections~~ [2-318](#), ~~and Sections~~ [2A-214](#), [2A-503](#), and [2A-504](#).

#### Definitional Cross References:

“Goods”. Section [2A-103\(1\)\(h\)](#).

“Lessee”. Section [2A-103\(1\)\(n\)](#).

“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).

“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).

“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

## Section 2A-217. Identification

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).

“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessor”. Section 2A-103(1)(p).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).

## Section 2A-218. Insurance and Proceeds

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections 2-501, ~~2-501(2)~~ and 2A-217.

#### Definitional Cross References:

“Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Buying”. Section 2A-103(1)(a).  
“Conforming”. Section 2A-103(1)(d).  
“Goods”. Section 2A-103(1)(h).  
“Insolvent”. Section ~~1-201(23)~~[1-201\(b\)\(23\)](#).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notification”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).

## Section 2A-219. Risk of Loss

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections 2-509(1), 2-509(2), ~~and 2-509(4)~~, [and 2A-220](#).

### Definitional Cross References:

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Merchant”. Section 2-104(1).  
“Receipt”. Section 2-103(1)(c).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Supplier”. Section 2A-103(1)(x).

### Section 2A-220. Effect of Default on Risk of Loss

\* \* \*

#### Official Comment

\* \* \*

### Changes:

Revised to reflect leasing practices and terminology. The rule in Section (1)(b) does not allow the lessee under a finance lease to treat the risk of loss as having remained with the supplier from the beginning. This is appropriate given the limited circumstances under which the lessee under a finance lease is allowed to revoke acceptance. Section 2A-517 and Section 2A-516 ~~official comment~~[Comment](#).

### Cross References:

[Sections 2A-516 and 2A-517.](#)

### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

“Supplier”. Section 2A-103(1)(x).

## Section 2A-221. Casualty to Identified Goods

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Section 2-613.

#### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Consumer lease”. Section 2A-103(1)(e).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Fault”. Section 2A-103(1)(f).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Supplier”. Section 2A-103(1)(x).

## Section 2A-301. Enforceability of Lease Contract

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

~~Article 1, especially Sections~~ [1-201\(37\)](#)[1-203](#), ~~and Sections~~ 2-104(1), 2A-103(1)(j), 2A-103(1)(l), 2A-103(1)(n), 2A-103(1)(o) ~~and 2A-103(1)(w)~~, 2A-103(3), 2A-103(4), 2A-201, [2A-211\(1\)](#), 2A-301 through 2A-303, 2A-303(2), 2A-303(5), 2A-304 through 2A-307,

2A-307(1), 2A-307(2)(a), 2A-308 through 2A-311, 2A-508, 2A-511(4), 2A-523, ~~Article 9, especially Sections 9-201,~~ and 9-505.

**Definitional Cross References:**

- “Creditor”. Section ~~1-201(12)~~[1-201\(b\)\(13\)](#).
- “Goods”. Section 2A-103(1)(h).
- “Lease contract”. Section 2A-103(1)(l).
- “Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).
- “Purchaser”. Section ~~1-201(33)~~[1-201\(b\)\(30\)](#).
- “Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).

**Section 2A-302. Title to and Possession of Goods**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 2A-301, 2A-308, and 9-202.

\* \* \*

**Section 2A-303. Alienability of Party’s Interest Under Lease Contract or of Lessor’s Residual Interest in Goods; Delegation of Performance; Transfer of Rights**

\* \* \*

**Official Comment**

\* \* \*

**Purposes:**

\* \* \*

6. Subsection (4) implements the rule of subsection (2). Subsection (2) provides that, even though a transfer is effective, a provision in the lease agreement prohibiting it or making it an event of default may be enforceable as provided in subsection (4). See ~~Brummond~~[Brummund v. First National Bank of Clovis](#), 656 P.2d 884, ~~35 U.C.C.Rep.Serv. (Callaghan) 1311~~ (N.Mex.

1983), stating the analogous rule for [former](#) Section 9-311 ([now Section 9-401](#)). If the transfer prohibited by the lease agreement is made an event of default, then, under subsection 4(a), unless the default is waived or there is an agreement otherwise, the aggrieved party has the rights and remedies referred to in Section 2A-501(2), viz. those in this Article and, except as limited in the Article, those provided in the lease agreement. In the unlikely circumstance that the lease agreement prohibits the transfer without making a violation of the prohibition an event of default or, even if there is no prohibition against the transfer, and the transfer is one that materially impairs performance, changes duties, or increases risk (for example, a sublease or assignment to a party using the goods improperly or for an illegal purpose), then subsection 4(b) is applicable. In that circumstance, unless the party aggrieved by the transfer has otherwise agreed in the lease contract, such as by assenting to a particular transfer or to transfers in general, or agrees in some other manner, the aggrieved party has the right to recover damages from the transferor and a court may, in appropriate circumstances, grant other relief, such as cancellation of the lease contract or an injunction against the transfer.

\* \* \*

9. Subsection (5) is taken almost verbatim from the provisions of Section 2-210(5). The subsection states a rule of construction that distinguishes a commercial assignment, which substitutes the assignee for the assignor as to rights and duties, and an assignment for security or financing assignment, which substitutes the assignee for the assignor only as to rights. Note that the assignment for security or financing assignment is a subset of all security interests. Security interest is defined to include “any interest of a buyer of chattel paper”. Section ~~1-201(37)~~ [1-201\(b\)\(35\)](#). Chattel paper is defined to include ~~a lease~~ [the right to payment arising under certain leases of specific goods](#). Section 9-102(a)(11). Thus, a buyer of [the lessor’s rights under such leases](#) is the holder of a security interest in the leases. That conclusion should not influence this issue, as the policy is quite different. Whether a buyer of [the lessor’s right to payment under leases of goods](#) is the holder of a commercial assignment, or an assignment for security or financing assignment should be determined by the language of the assignment or the circumstances of the assignment.

\* \* \*

### **Cross References:**

Sections ~~1-201(11)~~ [1-201\(b\)\(10\)](#), ~~1-201(37)~~ [1-201\(b\)\(35\)](#), 2-210, ~~2A-401~~, [2A-501\(2\)](#), 9-102(a)(11), 9-109(a)(3), [9-401](#), 9-406, and 9-407.

### **Definitional Cross References:**

~~“Agreed” and~~ “Agreement”. Section ~~1-201(3)~~ [1-201\(b\)\(3\)](#).

“Conspicuous”. Section ~~1-201(10)~~ [1-201\(b\)\(10\)](#).

[“Consumer lease”](#). Section [2A-103\(1\)\(e\)](#).

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Lessor’s residual interest”. Section 2A-103(1)(q).  
“Notice”. Section ~~1-201(25)~~1-202(a).  
“Party”. Section ~~1-201(29)~~1-201(b)(26).  
“Person”. Section ~~1-201(30)~~1-201(b)(27).  
“Reasonable time”. Section ~~1-204(1) and (2)~~1-205(a).  
“Rights”. Section ~~1-201(36)~~1-201(b)(34).  
“Term”. Section ~~1-201(42)~~1-201(b)(40).  
“Writing”. Section ~~1-201(46)~~1-201(b)(43).

## Section 2A-304. Subsequent Lease of Goods by Lessor

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

7. Subsection (3) states a rule with respect to a transfer of goods from a lessor to a subsequent lessee where the goods are subject to an existing lease and covered by a certificate of title. The subsequent lessee’s rights are no greater than those provided by this section and the applicable certificate of title statute, including any applicable case law construing such statute. Where the relationship between the certificate of title statute and Section 2-403, the statutory analogue to this section, has been construed by a court, that construction is incorporated here. Sections 2A-103(4) and ~~1-102(1) and (2)~~1-103. The better rule is that the certificate of title statutes are in harmony with Section 2-403 and thus would be in harmony with this section. *E.g.*, *Atwood Chevrolet-Olds v. Aberdeen Mun. School Dist.*, 431 So. 2d 926, 928 (Miss. 1983); *Godfrey v. Gilsdorf*, 476 P.2d 3, 6, ~~86 Nev. 714, 718~~ (Nev. 1970); *Martin v. Nager*, ~~192 N.J. Super. 189, 197-98~~, 469 A.2d 519, 523 (N.J. Super. Ct. Ch. Div. 1983). Where the certificate of title statute is silent on this issue of transfer, this section will control.

#### Cross References:

Sections ~~1-102~~, 1-103, ~~1-201(33)~~1-201(b)(9), (13), (30), 2-403, 2A-103(1)(q), (v), 2A-103(3), ~~2A-103(4)~~, 2A-303 ~~and~~ 2A-305, 2A-527(4), and 2A-307(2).

#### Definitional Cross References:

“Agreed”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Entrusting”. Section 2-403(3).  
“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~[1-201\(b\)\(20\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Leasehold interest”. Section 2A-103(1)(m).  
“Lessee”. Section 2A-103(1)(n).  
“Lessee in the ordinary course of business”. Section 2A-103(1)(o).  
“Lessor”. Section 2A-103(1)(p).  
“Merchant”. Section 2-104(1).  
“Purchase”. Section 2A-103(1)(v).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-305. Sale or Sublease of Goods by Lessee

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

This section, a companion to Section 2A-304, states the rule with respect to the leasehold interest obtained by a buyer or sublessee from a lessee of goods under an existing lease contract. Cf. Section 2A-304 ~~official comment~~[Comment](#). Note that this provision is consistent with existing case law, which prohibits the bailee’s transfer of title to a good faith purchaser for value under Section 2-403(1). *Rohweder v. Aberdeen Producers Credit Ass’n*, 765 F.2d 109 (8th Cir. 1985).

Subsection (2) is also consistent with existing case law. *American Standard Credit, Inc. v. National Cement Co.*, 643 F.2d 248, 269-70 (5th Cir. 1981); *but cf. Exxon Co., U.S.A. v. TLW Computer Indus.*, 37 U.C.C. Rep. Serv. (Callaghan) 1052, 1057-58 (D. Mass. 1983). Unlike Section 2A-304(2), this subsection does not contain any requirement with respect to the time that the goods were entrusted to the merchant. In Section 2A-304(2) the competition is between two customers of the merchant lessor; the time of entrusting was added as a criterion to create additional protection to the customer who was first in time: the existing lessee. In subsection (2) the equities between the competing interests were viewed as balanced.

\* \* \*



Subsection (3) states a rule of construction with respect to a transfer of goods from a lessee to a buyer or sublessee, where the goods are subject to an existing lease and covered by a certificate of title. Cf. Section 2A-304 ~~official comment~~[Comment](#).

**Cross References:**

Sections 2-403, 2A-103(1)(a), 2A-304, and ~~2A-305(2)~~[2A-511\(4\)](#).

**Definitional Cross References:**

“Buyer”. Section 2-103(1)(a).

“Buyer in the ordinary course of business”. Section 2A-103(1)(a).

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).

“Entrusting”. Section 2-403(3).

“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~[1-201\(b\)\(20\)](#).

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Lease contract”. Section 2A-103(1)(l).

“Leasehold interest.” Section 2A-103(1)(m).

“Lessee”. Section 2A-103(1)(n).

“Lessee in the ordinary course of business”. Section 2A-103(1)(o).

“Lessor”. Section 2A-103(1)(p).

“Merchant”. Section 2-104(1).

“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

“Sale”. Section 2-106(1).

“Sublease”. Section 2A-103(1)(w).

“Value”. Section ~~1-201(44)~~[1-204](#).

**Section 2A-306. Priority of Certain Liens Arising by Operation of Law**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Goods”. Section 2A-103(1)(h).

“Lease contract”. Section 2A-103(1)(l).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Lien”. Section 2A-103(1)(r).

“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).

## Section 2A-307. Priority of Liens Arising by Attachment or Levy on, Security Interests in, and Other Claims to Goods

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

2. Subsection (2) states a general rule of priority that a creditor of a lessor takes subject to the lease contract. Note the discussion above with regard to the scope of these rules. Section 2A-301 ~~official comment~~ [Comment 3\(g\)](#). Thus, the section will not only cover disputes between the prime lessee and a creditor of the prime lessor but also disputes between the prime lessee, or the sublessee, and a creditor of the sublessor.

\* \* \*

#### Cross References:

Sections ~~1-201(12)~~ [1-201\(b\)\(13\)](#), ~~1-201(25)~~, ~~1-201(37)~~, ~~1-201(44)~~, 2A-103(1)(n), ~~2A-103(1)(o)~~, 2A-103(1)(r), 2A-103(4), 2A-201(1)(b), ~~2A-301 official comment 3(g)~~, [2A-306](#), [2A-308](#), ~~Article 9, especially Sections 9-317, 9-321,~~ and 9-323.

#### Definitional Cross References:

“Creditor”. Section ~~1-201(12)~~ [1-201\(b\)\(13\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Knowledge” and “Knows”. Section ~~1-201(25)~~ [1-202\(b\)](#).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Leasehold interest”. Section 2A-103(1)(m).  
“Lessee”. Section 2A-103(1)(n).  
“Lessee in the ordinary course of business”. Section 2A-103(1)(o).  
“Lessor”. Section 2A-103(1)(p).  
“Lien”. Section 2A-103(1)(r).  
“Party”. Section ~~1-201(29)~~ [1-201\(b\)\(26\)](#).  
“Pursuant to commitment”. Section 2A-103(3).  
“Security interest”. Section ~~1-201(37)~~ [1-201\(b\)\(35\)](#).

## Section 2A-308. Special Rights of Creditors

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections ~~1-201(19)~~[1-201\(b\)\(20\)](#), ~~1-201(44)~~[1-204](#), 2-402(2), [2-402\(3\)\(b\)](#), and 2A-103([3](#)) and (4).

#### Definitional Cross References:

“Buyer”. Section 2-103(1)(a).

“Contract”. Section ~~1-201(11)~~[1-201\(b\)\(12\)](#).

“Creditor”. Section ~~1-201(12)~~[1-201\(b\)\(13\)](#).

“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~ [1-201\(b\)\(20\)](#).

“Goods”. Section 2A-103(1)(h).

“Lease contract”. Section 2A-103(1)(l).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Money”. Section 1-201(24).

“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).

“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

“Sale”. Section 2-106(1).

“Seller”. Section 2-103(1)(d).

“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-309. Lessor’s and Lessee’s Rights When Goods Become Fixtures

\* \* \*

### Official Comment

**Uniform Statutory Source:** Former Section 9-313 ([now codified as Sections 9-334 and 9-604](#)).

\* \* \*

#### Purposes:

1. While ~~Former~~[former](#) Section 9-313 (now codified as Sections 9-334 and 9-604)

provided a model for this section, certain provisions were substantially revised.

\* \* \*

6. ~~Finally,~~ Subsection (9) provides a mechanism for the lessor of fixtures to perfect its interest by filing a financing statement under the provisions of the Article on Secured Transactions (Article 9), even though the lease agreement does not create a security interest. Section 1-203. The relevant provisions of Article 9 must be interpreted permissively to give effect to this mechanism as it implicitly expands the scope of Article 9 so that its filing provisions apply to transactions that create a lease of fixtures, even though the lease agreement does not create a security interest.

\* \* \*

### Cross References:

Sections ~~1-201(37)~~, 2A-309(1)(c), 2A-309(4), ~~Article 9, especially Sections~~ 9-334, 9-502(a), and (b), 9-604 and 9-505.

### Definitional Cross References:

“~~Agreed~~ Agreement”. Section ~~1-201(3)~~ 1-201(b)(3).  
“Cancellation”. Section 2A-103(1)(b).  
“Conforming”. Section 2A-103(1)(d).  
“Consumer lease”. Section 2A-103(1)(e).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Lien”. Section 2A-103(1)(r).  
“Mortgage”. Section 9-102(a)(55).  
“Party”. Section ~~1-201(29)~~ 1-201(b)(26).  
“Person”. Section ~~1-201(30)~~ 1-201(b)(27).  
“Reasonable time”. Section ~~1-204(1) and (2)~~ 1-205(a).  
“Remedy”. Section ~~1-201(34)~~ 1-201(b)(32).  
“Rights”. Section ~~1-201(36)~~ 1-201(b)(34).  
“Security interest”. Section ~~1-201(37)~~ 1-201(b)(35).  
“Termination”. Section 2A-103(1)(z).  
“Value”. Section ~~1-201(44)~~ 1-204.  
“Writing”. Section ~~1-201(46)~~ 1-201(b)(43).

## Section 2A-310. Lessor’s and Lessee’s Rights When Goods Become Accessions

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Sections 2A-309(8), ~~9-102(a)(1)~~, [and](#) 9-335.

### Definitional Cross References:

“[Agreed Agreement](#)”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Buyer in the ordinary course of business”. Section 2A-103(1)(a).  
“Cancellation”. Section 2A-103(1)(b).  
“Creditor”. Section ~~1-201(12)~~[1-201\(b\)\(13\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Holder”. Section ~~1-201(20)~~[1-201\(b\)\(21\)](#).  
“Knowledge”. Section ~~1-201(25)~~[1-202\(b\)](#).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessee in the ordinary course of business”. Section 2A-103(1)(o).  
“Lessor”. Section 2A-103(1)(p).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Security interest”. Section ~~1-201(37)~~[1-201\(b\)\(35\)](#).  
“Termination”. Section 2A-103(1)(z).  
“Value”. Section ~~1-201(44)~~[1-204](#).  
“Writing”. Section ~~1-201(46)~~[1-201\(b\)\(43\)](#).

### Section 2A-311. Priority Subject to Subordination

\* \* \*

## Official Comment

\* \* \*

### Cross References:

~~Sections 1-102 and 2A-304 through 2A-310~~[Section 1-310](#).

**Definitional Cross References:**

“Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).

“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).

**Section 2A-401. Insecurity: Adequate Assurance of Performance**

\* \* \*

**Official Comment**

\* \* \*

**Cross Reference:**

[Section 2-609\(4\)](#).

**Definitional Cross References:**

“Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).

“~~Agreed~~ Agreement”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).

“Between merchants”. Section 2-104(3).

“Conforming”. Section 2A-103(1)(d).

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).

“Lease contract”. Section 2A-103(1)(l).

“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).

“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).

“Receipt”. Section 2-103(1)(c).

“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

“Writing”. Section ~~1-201(46)~~[1-201\(b\)\(43\)](#).

**Section 2A-402. Anticipatory Repudiation**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

[Sections 2A-401 and 2A-524](#).

**Definitional Cross References:**

- “Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).
- “Goods”. Section 2A-103(1)(h).
- “Lease contract”. Section 2A-103(1)(l).
- “Lessor”. Section 2A-103(1)(p).
- “Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).
- “Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).
- “Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).
- “Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).
- “Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).
- “Value”. Section ~~1-201(44)~~[1-204](#).

**Section 2A-403. Retraction of Anticipatory Repudiation**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

[Sections 2-611\(2\) and 2A-401.](#)

**Definitional Cross References:**

- “Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).
- “Cancellation”. Section 2A-103(1)(b).
- “Lease contract”. Section 2A-103(1)(l).
- “Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).
- “Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

**Section 2A-404. Substituted Performance**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“~~Agreed~~[Agreement](#)”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Fault”. Section 2A-103(1)(f).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Supplier”. Section 2A-103(1)(x).

## Section 2A-405. Excused Performance

\* \* \*

### Official Comment

\* \* \*

### Cross References:

[Section 2A-404.](#)

### Definitional Cross References:

“~~Agreed~~[Agreement](#)”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Contract”. Section ~~1-201(11)~~[1-201\(b\)\(12\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~[1-201\(b\)\(20\)](#).  
“Knows”. Section ~~1-201(25)~~[1-202\(b\)](#).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Sale”. Section 2-106(1).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Supplier”. Section 2A-103(1)(x).

## Section 2A-406. Procedure on Excused Performance

\* \* \*

### Official Comment



\* \* \*

### Cross References:

[Sections 2A-404, 2A-405, 2A-407.](#)

### **Definitional Cross References:**

“Consumer lease”. Section 2A-103(1)(e).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Installment lease contract”. Section 2A-103(1)(i).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notice”. Section ~~1-201(25)~~[1-202\(a\)](#).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Receipt”. Section 2-103(1)(c).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Termination”. Section 2A-103(1)(z).  
“Value”. Section ~~1-201(44)~~[1-204](#).  
“Written”. Section ~~1-201(46)~~[1-201\(b\)\(43\)](#).

### **Section 2A-407. Irrevocable Promises: Finance Leases**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Purposes:**

1. This section extends the benefits of the classic “hell or high water” clause to a finance lease that is not a consumer lease. This section is self-executing; no special provision need be added to the contract. This section makes covenants in a finance lease irrevocable and independent due to the function of the finance lessor in a ~~three party~~[three-party](#) relationship: the lessee is looking to the supplier to perform the essential covenants and warranties. Section 2A-209. Thus, upon the lessee’s acceptance of the goods the lessee’s promises to the lessor under the lease contract become irrevocable and independent. The provisions of this section remain subject to the obligation of good faith (Sections 2A-103(4) and ~~1-203~~[1-304](#)), and the lessee’s revocation of acceptance (Section 2A-517).

2. The section requires the lessee to perform even if the lessor's performance after the lessee's acceptance is not in accordance with the lease contract; the lessee may, however, have and pursue a cause of action against the lessor, e.g., breach of certain limited warranties (Sections 2A-210 and 2A-211(1)). This is appropriate because the benefit of the supplier's promises and warranties to the lessor under the supply contract and, in some cases, the warranty of a manufacturer who is not the supplier, is extended to the lessee under the finance lease. Section 2A-209. Despite this balance, this section excludes a finance lease that is a consumer lease. That a consumer be obligated to pay notwithstanding defective goods or the like is a principle that is not tenable under case law (*Unico v. Owen*, ~~50 N.J. 101~~, 232 A.2d 405 (N.J. 1967)), state statute (Unif. Consumer Credit Code §§ 3.403–~~3.405~~, ~~7A U.L.A. 126-31 (1974)~~), or federal statute (15 U.S.C. § 1666i (1982)).

\* \* \*

6. This section does not address whether a “hell or high water” clause, *i.e.*, a clause that is to the effect of this section, is enforceable if included in a finance lease that is a consumer lease or a lease that is not a finance lease. That issue will continue to be determined by the facts of each case and other law which this section does not affect. Sections 2A-104, 2A-103(4), 9-403 and 9-404. However, with respect to finance leases that are not consumer leases courts have enforced “hell or high water” clauses. *In re O.P.M. Leasing Servs.*, 21 ~~Bankr. B.R.~~ 993, 1006 (Bankr. S.D.N.Y. 1982).

\* \* \*

### **Cross References:**

Sections 1-103, ~~1-203~~ 1-304, 2A-103(1)(g), 2A-103(1)(j), 2A-103(4), 2A-104, 2A-209, ~~2A-209(1)~~, 2A-210, 2A-211(1), 2A-212(1), 2A-213, 2A-407(1), 2A-508(6), 2A-517(~~1~~)(b), 9-403, and 9-404.

### **Definitional Cross References:**

“Cancellation”. Section 2A-103(1)(b).  
“Consumer lease”. Section 2A-103(1)(e).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Party”. Section ~~1-201(29)~~ 1-201(b)(26).  
“Termination”. Section 2A-103(1)(z).

### **Section 2A-501. Default: Procedure**

\* \* \*

## Official Comment

\* \* \*

### Purposes:

\* \* \*

4. Subsection (4) establishes that the parties' rights and remedies are cumulative. [Ronald M. DeKoven, \*Leases of Equipment: Puritan Leasing Company v. August, A Dangerous Decision\*, 12 U.S.F.L. Rev. 257, 276-80 \(1978\)](#). Cumulation, and largely unrestricted selection, of remedies is allowed in furtherance of the general policy of the Commercial Code, stated in Section 1-305, that remedies be liberally administered to put the aggrieved party in as good a position as if the other party had fully performed. Therefore, cumulation of, or selection among, remedies is available to the extent necessary to put the aggrieved party in as good a position as it would have been in had there been full performance. However, cumulation of, or selection among, remedies is not available to the extent that the cumulation or selection would put the aggrieved party in a better position than it would have been in had there been full performance by the other party.

\* \* \*

### Cross References:

Sections 1-305, 2A-508, 2A-523, ~~Article 9, especially Sections 9-601~~, and 9-602.

### Definitional Cross References:

“Goods”. Section 2A-103(1)(h).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Party”. Section 1-201(b)(26).  
“Remedy”. Section 1-201(b)(32).  
“Rights”. Section 1-201(b)(34).

### Section 2A-502. Notice After Default

\* \* \*

## Official Comment

**Uniform Statutory Source:** None.

**Purposes:**

This section makes clear that absent agreement to the contrary or provision in this Article to the contrary, *e.g.*, Section 2A-516(3)(a), the party in default is not entitled to notice of default or enforcement. While a review of Part 5 of Article 9 leads to the same conclusion with respect to giving notice of default to the debtor, it is never stated. Although Article 9 requires notice of disposition and strict foreclosure, the different scheme of lessors' and lessees' rights and remedies developed under the common law, and codified by this Article, generally does not require notice of enforcement; furthermore, such notice is not mandated by due process requirements. However, certain sections of this Article do require notice. *E.g.*, Section 2A-517(4)<sup>\*</sup>.

**Cross References:**

Sections 2A-516(3)(a), 2A-517(4)<sup>\*</sup>, and Article 9, ~~esp.~~ Part 5.

**Definitional Cross References:**

“Lease agreement”. Section 2A-103(1)(k).

“Lease contract”. Section 2A-103(1)(l).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Notice”. Section ~~1-201(25)~~ 1-202(a).

“Party”. Section ~~1-201(29)~~ 1-201(b)(26).

<sup>\*</sup>~~Previous incorrect cross reference corrected by Permanent Editorial Board action, November 1992.~~

**Section 2A-503. Modification or Impairment of Rights and Remedies**

\* \* \*

**Official Comment**

\* \* \*

**Purposes:**

1. A significant purpose of this Part is to provide rights and remedies for those parties to a lease who fail to provide them by agreement or whose rights and remedies fail of their essential purpose or are unenforceable. However, it is important to note that this implies no restriction on

freedom to contract. Sections 2A-103(4) and ~~1-102(3)~~[1-302\(a\)](#). Thus, subsection (1), a revised version of the provisions of Section 2-719(1), allows the parties to the lease agreement freedom to provide for rights and remedies in addition to or in substitution for those provided in this Article and to alter or limit the measure of damages recoverable under this Article. Except to the extent otherwise provided in this Article (*e.g.*, Sections 2A-105, 106 and 108(1) and (2)), this Part shall be construed neither to restrict the parties' ability to provide for rights and remedies or to limit or alter the measure of damages by agreement, nor to imply disapproval of rights and remedy schemes other than those set forth in this Part.

2. Subsection (2) makes explicit with respect to this Article what is implicit in Section 2-719 with respect to the Article on Sales (Article 2): if an exclusive remedy is held to be unconscionable, remedies under this Article are available. Section 2-719 ~~official comment~~[Comment](#) 1.

\* \* \*

### **Cross References:**

Sections ~~1-102(3)~~, 1-103, [1-302\(a\)](#), ~~Article 2, especially Sections 2-701, 2-719, 2-719(1), 2-719(3), 2-719 official comment 1, and Sections~~ 2A-103(4), 2A-105, 2A-106, 2A-108(1), 2A-108(2), and 2A-504.

### **Definitional Cross References:**

“~~Agreed~~[Agreement](#)”. Section ~~1-201(3)~~[1-201\(b\)\(3\)](#).  
“Consumer goods”. Section 9-102(a)(23).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Person”. Section ~~1-201(30)~~[1-201\(b\)\(27\)](#).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

### **Section 2A-504. Liquidation of Damages**

\* \* \*

### **Official Comment**

\* \* \*

### **Purposes:**

\* \* \*

This section does not incorporate two other tests that under sales law determine enforceability of liquidated damages, *i.e.*, difficulties of proof of loss and inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The ability to liquidate damages is critical to modern leasing practice; given the parties' freedom to contract at common law, the policy behind retaining these two additional requirements here was thought to be outweighed. Further, given the expansion of subsection (1) to enable the parties to liquidate the amount payable with respect to an indemnity for loss or diminution of anticipated tax benefits resulted in another change: the last sentence of Section 2-718(1), providing that a term fixing unreasonably large liquidated damages is void as a penalty, was also not incorporated. The impact of local, state and federal tax laws on a leasing transaction can result in an amount payable with respect to the tax indemnity many times greater than the original purchase price of the goods. By deleting the reference to unreasonably large liquidated damages the parties are free to negotiate a formula, restrained by the rule of reasonableness in this section. These changes should invite the parties to liquidate damages. [Ellen A. Peters, Remedies for Breach of Contracts Relating to the Sale of Goods Under the Uniform Commercial Code: A Roadmap for Article Two](#), 73 Yale L.J. 199, 278 (1963).

\* \* \*

#### **Cross References:**

Sections ~~1-201(37)~~[1-203](#), 2-718, ~~2-718(1), 2-718(2)(b) and~~ 2-719(2), [2A-525](#), and [2A-526](#).

#### **Definitional Cross References:**

“Consumer lease”. Section 2A-103(1)(e).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Insolvent”. Section ~~1-201(23)~~[1-201\(b\)\(23\)](#).  
“Lease agreement”. Section 2A-103(1)(k).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Lessor’s residual interest”. Section 2A-103(1)(q).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Present value”. Section ~~2A-103(1)(u)~~[1-201\(b\)\(28\)](#).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).  
“Value”. Section ~~1-201(44)~~[1-204](#).

#### **Section 2A-505. Cancellation and Termination and Effect of Cancellation, Termination,**

## Rescission, or Fraud on Rights and Remedies

\* \* \*

### Official Comment

\* \* \*

#### Definitional Cross References:

“Cancellation”. Section 2A-103(1)(b).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l).  
“Party”. Section ~~1-201(29)~~1-201(b)(26).  
“Remedy”. Section ~~1-201(34)~~1-201(b)(32).  
“Rights”. Section ~~1-201(36)~~1-201(b)(34).  
“Termination”. Section 2A-103(1)(z).

## Section 2A-506. Statute of Limitations

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections ~~2-725(1)~~ and ~~2-725(2)~~.

#### Definitional Cross References:

“Action”. Section ~~1-201(1)~~1-201(b)(1).  
“Aggrieved party”. Section ~~1-201(2)~~1-201(b)(2).  
“Lease contract”. Section 2A-103(1)(l).  
“Party”. Section ~~1-201(29)~~1-201(b)(26).  
“Remedy”. Section ~~1-201(34)~~1-201(b)(32).  
“Termination”. Section 2A-103(1)(z).

## Section 2A-507. Proof of Market Rent: Time and Place

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Sections 2A-519 and 2A-528.

### **Definitional Cross References:**

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Lease agreement”. Section 2A-103(1)(k).

“Notice”. Section ~~1-201(25)~~1-202(a).

“Party”. Section ~~1-201(29)~~1-201(b)(26).

“Reasonable time”. Section ~~1-204(1) and (2)~~1-205(a).

“Usage of trade”. Section ~~1-205~~1-303(c).

“Value”. Section ~~1-201(44)~~1-204.

### **Section 2A-508. Lessee’s Remedies**

\* \* \*

## Official Comment

\* \* \*

### **Purposes:**

1. This section is an index to Sections 2A-509 through 522 which set out the lessee’s rights and remedies after the lessor’s default. The lessor and the lessee can agree to modify the rights and remedies available under this Article; they can, among other things, provide that for defaults other than those specified in subsection (1) the lessee can exercise the rights and remedies referred to in subsection (1); and they can create a new scheme of rights and remedies triggered by the occurrence of the default. Sections 2A-103(4) and ~~1-102(3)~~1-302(a).

2. Subsection (1), a substantially rewritten version of the provisions of Section 2-711(1), lists three cumulative remedies of the lessee where the lessor has failed to deliver conforming goods or has repudiated the contract, or the lessee has rightfully rejected or justifiably revoked. Sections 2A-501(2) and (4). Subsection (1) also allows the lessee to exercise any contractual remedy. This Article rejects any general doctrine of election of remedy. To determine if one remedy bars another in a particular case is a function of whether the lessee has been put in as good a position as if the lessor had fully performed the lease agreement. Use of multiple remedies is barred only if the effect is to put the lessee in a better position than it would have



been in had the lessor fully performed under the lease. Sections 2A-103(4), 2A-501(4), and ~~1-106(1)~~[1-305\(a\)](#). Subsection (1)(b), in recognition that no bright line can be created that would operate fairly in all installment lease cases and in recognition of the fact that a lessee may be able to cancel the lease (revoke acceptance of the goods) after the goods have been in use for some period of time, does not require that all lease payments made by the lessee under the lease be returned upon cancellation. Rather, only such portion as is just of the rent and security payments made may be recovered. If a defect in the goods is discovered immediately upon tender to the lessee and the goods are rejected immediately, then the lessee should recover all payments made. If, however, for example, a 36-month equipment lease is terminated in the 12th month because the lessor has materially breached the contract by failing to perform its maintenance obligations, it may be just to return only a small part or none of the rental payments already made.

\* \* \*

9. Subsection (6), a slightly revised version of the provisions of Section 2-717, sanctions a right of set-off by the lessee, subject to the rule of Section 2A-407 with respect to irrevocable promises in a finance lease that is not a consumer lease, and further subject to an enforceable “hell or high water” clause in the lease agreement. Section 2A-407 ~~official comment~~[Comment](#). No attempt is made to state how the set-off should occur; this is to be determined by the facts of each case.

\* \* \*

### Cross References:

Sections ~~1-102(3), 1-103, 1-106(1)~~[1-302\(a\), 1-305\(a\)](#), ~~Article 2, especially Sections 2-711, 2-717 and Sections 2A-103(4), 2A-209, 2A-210, 2A-211(1), 2A-402, 2A-407, 2A-501(2), 2A-501(4), 2A-509 through 2A-522, 2A-511(3), 2A-517(5), 2A-527(5)~~, and ~~Section 9-110~~.

### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Consumer lease”. Section [2A-103\(1\)\(e\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~[1-201\(b\)\(20\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Installment lease contract”. Section 2A-103(1)(i).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Receipt”. Section 2-103(1)(c).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Security interest”. Section ~~1-201(37)~~[1-201\(b\)\(35\)](#).

“Value”. Section ~~1-201(44)~~[1-204](#).

## **Section 2A-509. Lessee’s Rights on Improper Delivery; Rightful Rejection**

\* \* \*

### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Commercial unit”. Section 2A-103(1)(c).  
“Conforming”. Section 2A-103(1)(d).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Installment lease contract”. Section 2A-103(1)(i).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).

## **Section 2A-510. Installment Lease Contracts: Rejection and Default**

\* \* \*

### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Action”. Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).  
“Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).  
“Cancellation”. Section 2A-103(1)(b).  
“Conforming”. Section 2A-103(1)(d).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Installment lease contract”. Section 2A-103(1)(i).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).

“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## **Section 2A-511. Merchant Lessee’s Duties as to Rightfully Rejected Goods**

\* \* \*

### **Official Comment**

\* \* \*

#### **Cross References:**

[Sections 2A-508\(5\) and 2A-512.](#)

#### **Definitional Cross References:**

“Action”. Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).  
“Good faith”. Sections ~~1-201(19) and 2-103(1)(b)~~[1-201\(b\)\(20\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Merchant lessee”. Section 2A-103(1)(t).  
“Purchaser”. Section ~~1-201(33)~~[1-201\(b\)\(30\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Security interest”. Section ~~1-201(37)~~[1-201\(b\)\(35\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## **Section 2A-512. Lessee’s Duties as to Rightfully Rejected Goods**

\* \* \*

### **Official Comment**

\* \* \*

#### **Cross References:**

Sections 2-602(2)(b), 2-602(2)(c), ~~and 2-604~~ [2A-508\(5\), and 2A-511.](#)

### Definitional Cross References:

“Action”. Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notification”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Security interest”. Section ~~1-201(37)~~[1-201\(b\)\(35\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Value”. Section ~~1-201(44)~~[1-204](#).

### Section 2A-513. Cure by Lessor of Improper Tender or Delivery; Replacement

\* \* \*

#### Official Comment

\* \* \*

### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Money”. Section 1-201(24).  
“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Supplier”. Section 2A-103(1)(x).

### Section 2A-514. Waiver of Lessee’s Objections

\* \* \*

#### Official Comment

\* \* \*

## Purposes:

1. The principles applicable to the commercial practice of payment against documents (subsection 2) are explained in ~~official comment 4 to~~ Section 2-605 [Comment 4](#), the statutory analogue to this section.

\* \* \*

## Cross Reference:

~~Section 2-605 official comment 4~~ [Section 2A-513](#).

## Definitional Cross References:

“Between merchants”. Section 2-104(3).

“Goods”. Section 2A-103(1)(h).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Rights”. Section ~~1-201(36)~~ [1-201\(b\)\(34\)](#).

“Seasonably”. Section ~~1-204(3)~~ [1-205\(b\)](#).

“Supplier”. Section 2A-103(1)(x).

“Writing”. Section ~~1-201(46)~~ [1-201\(b\)\(43\)](#).

## Section 2A-515. Acceptance of Goods

\* \* \*

## Official Comment

\* \* \*

## Cross References:

Sections 2-606(1)(a), ~~and~~ 2-606(1)(c), [and 2A-509\(2\)](#).

\* \* \*

## Section 2A-516. Effect of Acceptance of Goods; Notice of Default; Burden of Establishing Default After Acceptance; Notice of Claim or Litigation to Person Answerable Over

\* \* \*

## Official Comment

\* \* \*

### Purposes:

1. Subsection (2) creates a special rule for finance leases, precluding revocation if acceptance is made with knowledge of nonconformity with respect to the lease agreement, as opposed to the supply agreement; this is not inequitable as the lessee has a direct claim against the supplier. Section 2A-209(1). Revocation of acceptance of a finance lease is permitted if the lessee's acceptance was without discovery of the nonconformity (with respect to the lease agreement, not the supply agreement) and was reasonably induced by the lessor's assurances. Section 2A-517(1)(b). Absent exclusion or modification, the lessor under a finance lease makes certain warranties to the lessee. Sections 2A-210 and 2A-211(1). Revocation of acceptance is not prohibited even after the lessee's promise has become irrevocable and independent. Section 2A-407 ~~official comment~~ [Comment](#). Where the finance lease creates a security interest, the rule may be to the contrary. *General Elec. Credit Corp. of Tennessee v. Ger-Beck Mach. Co.*, 806 F.2d 1207 (~~3rd~~ [3d](#) Cir. 1986).

\* \* \*

### Cross References:

Sections 2-607(3)(b), 2A-103(1)(x), 2A-209(1), 2A-210, 2A-211(1), 2A-211(2), ~~2A-407 official comment~~ and 2A-517(1)(b).

### Definitional Cross References:

"Action". Section ~~1-201(1)~~ [1-201\(b\)\(1\)](#).  
"Agreement". Section ~~1-201(3)~~ [1-201\(b\)\(3\)](#).  
"Burden of establishing". Section ~~1-201(8)~~ [1-201\(b\)\(8\)](#).  
"Conforming". Section 2A-103(1)(d).  
"Consumer lease". Section 2A-103(1)(e).  
"Delivery". Section ~~1-201(14)~~ [1-201\(b\)\(15\)](#).  
"Discover". Section ~~1-201(25)~~ [1-202\(c\)](#).  
"Finance lease". Section 2A-103(1)(g).  
"Goods". Section 2A-103(1)(h).  
"Knowledge". Section ~~1-201(25)~~ [1-202\(b\)](#).  
"Lease agreement". Section 2A-103(1)(k).  
"Lease contract". Section 2A-103(1)(l).  
"Lessee". Section 2A-103(1)(n).  
"Lessor". Section 2A-103(1)(p).  
"Notice". Section ~~1-201(25)~~ [1-202\(a\)](#).  
"Notifies". Section ~~1-201(26)~~ [1-202\(d\)](#).  
"Person". Section ~~1-201(30)~~ [1-201\(b\)\(27\)](#).

“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Receipt”. Section 2-103(1)(c).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Written”. Section ~~1-201(46)~~[1-201\(b\)\(43\)](#).

## Section 2A-517. Revocation of Acceptance of Goods

\* \* \*

### Official Comment

\* \* \*

#### Changes:

Revised to reflect leasing practices and terminology. Note that in the case of a finance lease the lessee retains a limited right to revoke acceptance. Sections 2A-517(1)(b) and 2A-516 ~~official comment~~[Comment](#). New subsections (2) and (3) added.

\* \* \*

#### Cross Reference:

~~Section 2A-516 official comment.~~

#### Definitional Cross References:

“Commercial unit”. Section 2A-103(1)(c).  
“Conforming”. Section 2A-103(1)(d).  
[“Consumer lease”. Section 2A-103\(1\)\(e\).](#)  
“Discover”. Section ~~1-201(25)~~[1-202\(c\)](#).  
“Finance lease”. Section 2A-103(1)(g).  
“Goods”. Section 2A-103(1)(h).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Lot”. Section 2A-103(1)(s).  
“Notifies”. Section ~~1-201(26)~~[1-202\(d\)](#).  
“Reasonable time”. Section ~~1-204(1) and (2)~~[1-205\(a\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Seasonably”. Section ~~1-204(3)~~[1-205\(b\)](#).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-518. Cover; Substitute Goods

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections [1-302](#), 2-712(1), [2A-503](#), [2A-504](#), [2A-508\(1\)](#), 2A-519, 9-625 and 9-627.

#### Definitional Cross References:

“Agreement”. Section 1-201(b)(3).

“Contract”. Section 1-201(b)(12).

“Good faith”. Section ~~1-201(20)~~ [1-201\(b\)\(20\)](#).

“Goods”. Section 2A-103(1)(h).

“Lease”. Section 2A-103(1)(j).

“Lease agreement”. Section 2A-103(1)(k).

“Lease contract”. Section 2A-103(1)(l).

“Lessee”. Section 2A-103(1)(n).

“Lessor”. Section 2A-103(1)(p).

“Party”. Section 1-201(b)(26).

“Present value”. Section 1-201(b)(28).

“Purchase”. Sections [1-201\(b\)\(29\)](#) and 2A-103(1)(v).

## Section 2A-519. Lessee’s Damages for Non-delivery, Repudiation, Default, and Breach of Warranty in Regard to Accepted Goods

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

2. The measure of damage is the present value, as of the date of default, of the market rent for the remaining term of the lease less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved in



consequence of the default. Note that the reference in Section 2A-519(1) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this Article and the lease agreement. American Bar Foundation, *Commentaries on Indentures*, § 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended or cured. Sections 2A-103(4) and 1-103.

\* \* \*

### **Cross References:**

Sections 2-713(1), 2-713(2), 2-714, ~~and Section 2A-103(4), 2A-501(1), 2A-503, 2A-504, 2A-516(3), and~~ 2A-518.

\* \* \*

### **Section 2A-520. Lessee's Incidental and Consequential Damages**

\* \* \*

### **Official Comment**

\* \* \*

### **Definitional Cross References:**

“Goods”. Section 2A-103(1)(h).  
“Knows”. Section ~~1-201(25)~~1-202(b).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Person”. Section ~~1-201(30)~~1-201(b)(27).  
“Receipt”. Section 2-103(1)(c).

\* \* \*

### **Official Comment**

\* \* \*

### **Definitional Cross References:**

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Term”. Section ~~1-201(42)~~[1-201\(b\)\(40\)](#).

## Section 2A-522. Lessee’s Right to Goods on Lessor’s Insolvency

\* \* \*

### Official Comment

\* \* \*

#### Cross Reference:

[Section 2A-217.](#)

#### Definitional Cross References:

“Conforming”. Section 2A-103(1)(d).  
“Goods”. Section 2A-103(1)(h).  
“Insolvent”. Section ~~1-201(23)~~[1-201\(b\)\(23\)](#).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Receipt”. Section 2-103(1)(c).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

## Section 2A-523. Lessor’s Remedies

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

2. The lessor and the lessee can agree to modify the rights and remedies available under

the Article; they can, among other things, provide that for defaults other than those specified in subsection (1) the lessor can exercise the rights and remedies referred to in subsection (1), whether or not the default would otherwise be held to substantially impair the value of the lease contract to the lessor; they can also create a new scheme of rights and remedies triggered by the occurrence of the default. Sections 2A-103(4) and ~~1-102(3)~~[1-302\(a\)](#).

\* \* \*

4. This Article rejects any general doctrine of election of remedy. Whether, in a particular case, one remedy bars another, is a function of whether lessor has been put in as good a position as if the lessee had fully performed the lease contract. Multiple remedies are barred only if the effect is to put the lessor in a better position than it would have been in had the lessee fully performed under the lease. Sections 2A-103(4), 2A-501(4), and ~~1-106(1)~~[1-305\(a\)](#).

\* \* \*

20. Subsection (3) allows the lessor access to a remedy scheme provided in this Article as well as that contained in the lease contract if the lessee is in default for reasons other than those stated in subsection (1). Note that the reference to this Article includes supplementary principles of law and equity, *e.g.*, fraud, misrepresentation and duress. Sections 2A-103(4) and ~~1-103~~[1-103\(b\)](#).

21. There is no special treatment of the finance lease in this section. Absent supplementary principles of law to the contrary, in most cases the supplier will have no rights or remedies against the defaulting lessee. Section 2A-209(2)(ii). Given that the supplier will look to the lessor for payment, this is appropriate. However, there is a specific exception to this rule with respect to the right to identify goods to the lease contract. Section 2A-524(2). The parties are free to create a different result in a particular case. Sections 2A-103(4) and ~~1-102(3)~~[1-302\(a\)](#).

### **Cross References:**

Sections ~~1-102(3)~~, ~~1-103(b)~~, ~~1-106(1)~~, ~~1-201(37)~~[1-203](#), [1-302\(a\)](#), [1-305\(a\)](#), 2-703, 2A-103(1)(j), 2A-103(4), 2A-209(2)(ii), [2A-501\(2\)](#), 2A-501(4), 2A-504(1), 2A-505(1), 2A-507, 2A-510~~(2)~~, [2A-523\(2\)](#), and 2A-524 through 2A-531, ~~2A-524(2)~~, ~~2A-525(1)~~, ~~2A-525(2)~~, ~~2A-526(1)~~, ~~2A-527(1)~~, ~~2A-527(2)~~, ~~2A-528(1)~~ and ~~2A-529(3)~~.

### **Definitional Cross References:**

“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Installment lease contract”. Section 2A-103(1)(i).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Remedy”. Section ~~1-201(34)~~[1-201\(b\)\(32\)](#).

“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-524. Lessor’s Right to Identify Goods to Lease Contract

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

[Sections 2A-523\(1\), 2A-523\(3\)\(a\), and 2A-527\(1\)](#).

#### Definitional Cross References:

“Aggrieved party”. Section ~~1-201(2)~~[1-201\(b\)\(2\)](#).  
“Conforming”. Section 2A-103(1)(d).  
“Goods”. Section 2A-103(1)(h).  
“Learn”. Section ~~1-201(25)~~[1-202\(c\)](#).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessor”. Section 2A-103(1)(p).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).  
“Supplier”. Section 2A-103(1)(x).  
“Value”. Section ~~1-201(44)~~[1-204](#).

## Section 2A-525. Lessor’s Right to Possession of Goods

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

3. Subsection (3), a revised version of the provisions of former Section 9-503 (now codified as Section 9-609), allows the lessor to proceed under subsection (2) without judicial

process, absent breach of the peace, or by action. Sections 2A-501(3), 2A-103(4) and ~~1-201(1)~~[1-201\(b\)\(1\)](#). In the appropriate case action includes injunctive relief. *Clark Equip. Co. v. Armstrong Equip. Co.*, 431 F.2d 54 (5th Cir.1970), *cert. denied*, 402 U.S. 909 (1971). This Section, as well as a number of other Sections in this Part, are included in the Article to codify the lessor's common law right to protect the lessor's reversionary interest in the goods. Section 2A-103(1)(q). These Sections are intended to supplement and not displace principles of law and equity with respect to the protection of such interest. Sections 2A-103(4) and 1-103. Such principles apply in many instances, *e.g.*, loss or damage to goods if risk of loss passes to the lessee, failure of the lessee to return goods to the lessor in the condition stipulated in the lease, and refusal of the lessee to return goods to the lessor after termination or cancellation of the lease. See also Section 2A-532.

### **Cross References:**

Sections ~~1-106(2)~~[1-103](#), [1-201\(b\)\(1\)](#), 2-702(1), 2-702(2), [2A-103\(1\)\(q\)](#), 2A-103(4), 2A-501(3), [2A-523\(1\)](#), [2A-523\(3\)\(a\)](#), [2A-527](#), 2A-532, and 9-609.

### **Definitional Cross References:**

“Action”. Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Discover”. Section ~~1-201(25)~~[1-202\(c\)](#).  
“Goods”. Section 2A-103(1)(h).  
“Insolvent”. Section ~~1-201(23)~~[1-201\(b\)\(23\)](#).  
“Lease contract”. Section 2A-103(1)(l).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Party”. Section ~~1-201(29)~~[1-201\(b\)\(26\)](#).  
“Rights”. Section ~~1-201(36)~~[1-201\(b\)\(34\)](#).

## **Section 2A-526. Lessor's Stoppage of Delivery in Transit or Otherwise**

\* \* \*

### **Official Comment**

\* \* \*

### **Definitional Cross References:**

“Bill of lading”. Section ~~1-201(6)~~[1-201\(b\)\(6\)](#).  
“Delivery”. Section ~~1-201(14)~~[1-201\(b\)\(15\)](#).  
“Discover”. Section ~~1-201(25)~~[1-202\(c\)](#).  
“Goods”. Section 2A-103(1)(h).

“Insolvent”. Section ~~1-201(23)~~1-201(b)(23).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Notifies” and “Notification”. Section ~~1-201(26)~~1-202(d).  
“Person”. Section ~~1-201(30)~~1-201(b)(27).  
“Receipt”. Section 2-103(1)(c).  
“Remedy”. Section ~~1-201(34)~~1-201(b)(32).  
“Rights”. Section ~~1-201(36)~~1-201(b)(34).

## Section 2A-527. Lessor’s Rights to Dispose of Goods

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections 1-302, 2-706(1), 2-706(5), 2-706(6), 2A-103(4), 2A-304(1), 2A-503, 2A-504, 2A-507(2), 2A-523(1)(~~e~~), 2A-523(3)(a), 2A-525(~~2~~), 2A-526, 2A-527(5), 2A-528, 2A-530, 9-625, and 9-627.

#### Definitional Cross References:

“Buyer” and “Buying”. Section 2-103(1)(a).  
“Delivery”. Section 1-201(b)(15).  
“Good faith”. Section 1-201(b)(20).  
“Goods”. Section 2A-103(1)(h).  
“Lease”. Section 2A-103(1)(j).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Present value”. Section 1-201(b)(28).  
“Rights”. Section 1-201(b)(34).  
“Sale”. Section 2-106(1).  
“Security interest”. Sections 1-201(b)(35) and 1-203.  
“Value”. Section ~~1-201(44)~~1-204.

## Section 2A-528. Lessor’s Damages for Non-acceptance, Failure to Pay, Repudiation, or Other Default

\* \* \*

## Official Comment

\* \* \*

### Purposes:

\* \* \*

2. If the lessee has never taken possession of the goods, the measure of damage is the accrued and unpaid rent as of the date of default together with the present value, as of the date of default, of the original rent for the remaining term of the lease less the present value as of the same date of market rent, and incidental damages, less expenses saved in consequence of the default. Note that the reference in Section 2A-528(1)(i) and (ii) is to the date of default not to the date of an event of default. An event of default under a lease agreement becomes a default under a lease agreement only after the expiration of any relevant period of grace and compliance with any notice requirements under this Article and the lease agreement. American Bar Foundation, *Commentaries on Indentures*, § 5-1, at 216-217 (1971). Section 2A-501(1). This conclusion is also a function of whether, as a matter of fact or law, the event of default has been waived, suspended or cured. Sections 2A-103(4) and 1-103. If the lessee has taken possession of the goods, the measure of damages is the accrued and unpaid rent as of the earlier of the time the lessor repossesses the goods or the time the lessee tenders the goods to the lessor plus the difference between the present value, as of the same time, of the rent under the lease for the remaining lease term and the present value, as of the same time, of the market rent.

\* \* \*

5. In calculating profit, a court should include any expected appreciation of the goods, *e.g.* the foal of a leased brood mare. Because this subsection is intended to give the lessor the benefit of the bargain, a court should consider any reasonable benefit or profit expected by the lessor from the performance of the lease agreement. *See Honeywell, Inc. v. Lithonia Lighting, Inc.*, 317 F. Supp. 406, 413 (N.D. Ga. 1970); *Locks v. Wade*, 36 N.J. Super. 128, 131, 114 A.2d 875, 877 (N.J. Super. Ct. App. Div. 1955). Further, in calculating profit the concept of present value must be given effect. *Taylor v. Commercial Credit Equip. Corp.*, 170 Ga. App. 322, 316 S.E.2d 788 (Ga. Ct. App. 1984). *See generally* Section 2A-103(1)(u).

### Cross References:

Sections [1-103](#), [1-302](#), [2-708](#), [2A-103\(1\)\(q\)](#), [2A-103\(1\)\(u\)](#), ~~[2A-402](#)~~, ~~[2A-103\(4\)](#)~~, ~~[2A-501\(1\)](#)~~, ~~[2A-503](#)~~, ~~[2A-504](#)~~, ~~[2A-507](#)~~, ~~[2A-527\(2\)](#)~~, ~~[2A-527\(3\)](#)~~, ~~[2A-528\(1\)](#)~~, ~~and~~ ~~[2A-529](#)~~, and ~~[2A-530](#)~~.

\* \* \*

## Section 2A-529. Lessor's Action for the Rent

\* \* \*

### Official Comment

\* \* \*

#### Purposes:

\* \* \*

3. Under subsection (2) a lessor who is able and elects to sue for the rent due under a lease must hold goods not lost or damaged for the lessee. Subsection (3) creates an exception to the subsection (2) requirement. If the lessor disposes of those goods prior to collection of the judgment (whether as a matter of law or agreement), the lessor's recovery is governed by the measure of damages in Section 2A-527 if the disposition is by lease that is substantially similar to the original lease, or otherwise by the measure of damages in Section 2A-528. Section 2A-523 ~~official comment~~[Comment](#).

\* \* \*

5. The relationship between subsections (2) and (4) is important to understand. Subsection (2) requires the lessor to hold for the lessee identified goods in the lessor's possession. Absent agreement to the contrary, whether in the lease or otherwise, under most circumstances the requirement that the lessor hold the goods for the lessee for the term will mean that the lessor is not allowed to use them. Sections 2A-103(4) and ~~1-2031-304~~. Further, the lessor's use of the goods could be viewed as a disposition of the goods that would bar the lessor from recovery under this section, remitting the lessor to the two preceding sections for a determination of the lessor's claim for damages against the lessee.

\* \* \*

#### Cross References:

Sections ~~1-2031-304~~, ~~2-709~~, 2-709(3), 2A-103(4), [2A-219](#), 2A-501(2), 2A-501(4), 2A-503(2), 2A-504, 2A-523(1)(~~e~~), [2A-523\(3\)\(a\)](#), 2A-525(2), 2A-527, [and](#) 2A-528 ~~and 2A-529(2)~~.

#### Definitional Cross References:

"Action". Section ~~1-201(1)~~[1-201\(b\)\(1\)](#).

"Conforming". Section 2A-103(1)(d).

"Goods". Section 2A-103(1)(h).

"Lease". Section 2A-103(1)(j).

"Lease agreement". Section 2A-103(1)(k).

"Lease contract". Section 2A-103(1)(l).



“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Present value”. Section ~~2A-103(1)(u)~~1-201(b)(28).  
“Reasonable time”. Section ~~1-204(1) and (2)~~1-205(a).

### **Section 2A-530. Lessor’s Incidental Damages**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Aggrieved party”. Section ~~1-201(2)~~1-201(b)(2).  
“Delivery”. Section ~~1-201(14)~~1-201(b)(15).  
“Goods”. Section 2A-103(1)(h).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).

### **Section 2A-531. Standing to Sue Third Parties for Injury to Goods**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Action”. Section ~~1-201(1)~~1-201(b)(1).  
“Goods”. Section 2A-103(1)(h).  
“Lease contract”. Section 2A-103(1)(l ).  
“Lessee”. Section 2A-103(1)(n).  
“Lessor”. Section 2A-103(1)(p).  
“Party”. Section ~~1-201(29)~~1-201(b)(26).  
“Rights”. Section ~~1-201(36)~~1-201(b)(34).  
“Security interest”. Section ~~1-201(37)~~1-201(b)(35).

## ARTICLE 3 – NEGOTIABLE INSTRUMENTS

### Section 3-102. Subject Matter

\* \* \*

#### Official Comment

\* \* \*

3. Although the terms of Article 3 apply to transactions by Federal Reserve Banks, federal preemption would make ineffective any Article 3 provision that conflicts with federal law. The activities of the Federal Reserve Banks are governed by regulations of the Federal Reserve Board and by operating circulars issued by the Reserve Banks themselves. In some instances, the operating circulars are issued pursuant to a Federal Reserve Board regulation. In other cases, the Reserve Bank issues the operating circular under its own authority under the Federal Reserve Act, subject to review by the Federal Reserve Board. Section 3-102(c) states that Federal Reserve Board regulations and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of Article 3 to the extent of the inconsistency. Federal Reserve Board regulations, being valid exercises of regulatory authority pursuant to a federal statute, take precedence over state law if there is an inconsistency. *Childs v. Federal Reserve Bank of Dallas*, 719 F.2d 812 (5th Cir.1983), *reh. den.* 724 F.2d 127 (5th Cir.1984). Section 3-102(c) treats operating circulars as having the same effect whether issued under the Reserve Bank's own authority or under a Federal Reserve Board regulation. Federal statutes may also preempt Article 3. For example, the Expedited Funds Availability Act, 12 U.S.C. § 4001 et seq., provides that the Act and the regulations issued pursuant to the Act supersede any inconsistent provisions of the UCC. 12 U.S.C. § 4007(b).

\* \* \*

### Section 3-103. Definitions

\* \* \*

#### Official Comment

\* \* \*

5. Subsection (a)(7)(9) is a definition of ordinary care which is applicable not only to Article 3 but to Article 4 as well. See Section 4-104(c). The general rule is stated in the first sentence of subsection (a)(7)(9) and it applies both to banks and to persons engaged in businesses other than banking. Ordinary care means observance of reasonable commercial standards of the relevant businesses prevailing in the area in which the person is located. The second sentence of subsection (a)(7)(9) is a particular rule limited to the duty of a bank to examine an instrument taken by a bank for processing for collection or payment by automated

means. This particular rule applies primarily to Section 4-406 and it is discussed in Comment 4 to that section. Nothing in Section 3-103(a)(9) is intended to prevent a customer from proving that the procedures followed by a bank are unreasonable, arbitrary, or unfair.

\* \* \*

## **Section 3-104. Negotiable Instrument**

\* \* \*

### **Official Comment**

1. The definition of “negotiable instrument” defines the scope of Article 3 since Section 3-102 states: “This Article applies to negotiable instruments.” The definition in Section 3-104(a) incorporates other definitions in Article 3. An instrument is either a “promise,” defined in Section 3-103(a)(9), or “order,” defined in Section 3-103(a)(6). A promise is a written undertaking to pay money signed by the person undertaking to pay. An order is a written instruction to pay money signed by the person giving the instruction. Thus, the term “negotiable instrument” is limited to a signed writing that orders or promises payment of money. “Money” is defined in Section ~~1-201(24)~~[1-201\(b\)\(24\)](#) and is not limited to United States dollars. It also includes a medium of exchange established by a foreign government or monetary units of account established by an intergovernmental organization or by agreement between two or more nations. Five other requirements are stated in Section 3-104(a): First, the promise or order must be “unconditional.” The quoted term is explained in Section 3-106. Second, the amount of money must be “a fixed amount \*\*\* with or without interest or other charges described in the promise or order.” Section 3-112(b) relates to “interest.” Third, the promise or order must be “payable to bearer or to order.” The quoted phrase is explained in Section 3-109. An exception to this requirement is stated in subsection (c). Fourth, the promise or order must be payable “on demand or at a definite time.” The quoted phrase is explained in Section 3-108. Fifth, the promise or order may not state “any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money” with five exceptions. The quoted phrase is based on the first sentence of N.I.L. Section 5 which is the precursor of “no other promise, order, obligation or power given by the maker or drawer” appearing in former Section 3-104(1)(b). The words “instruction” and “undertaking” are used instead of “order” and “promise” that are used in the N.I.L. formulation because the latter words are defined terms that include only orders or promises to pay money. The first three exceptions stated in Section 3-104(a)(3) are based on and are intended to have the same meaning as former Section 3-112(1)(b), (c), (d), and (e), as well as N.I.L. § 5(1), (2), and (3). The final two exceptions stated in Section 3-104(a)(3), added pursuant to the Uniform Commercial Code Amendments (2022), deal with choice-of-law and choice-of-forum clauses. The latter of these includes an agreement to arbitrate. Subsection (b) states that “instrument” means a “negotiable instrument.” This follows former Section 3-102(1)(e) which treated the two terms as synonymous.

2. \* \* \*

Moreover, consistent with the principle stated in Section ~~1-102(2)(b)~~[1-103\(a\)\(2\)](#), the immediate parties to an order or promise that is not an instrument may provide by agreement that one or more of the provisions of Article 3 determine their rights and obligations under the writing. Upholding the parties' choice is not inconsistent with Article 3. Such an agreement may bind a transferee of the writing if the transferee has notice of it or the agreement arises from usage of trade and the agreement does not violate other law or public policy. An example of such an agreement is a provision that a transferee of the writing has the rights of a holder in due course stated in Article 3 if the transferee took rights under the writing in good faith, for value, and without notice of a claim or defense.

Even without an agreement of the parties to an order or promise that is not an instrument, it may be appropriate, consistent with the principles stated in Section ~~1-102(2)~~[1-103\(a\)](#), for a court to apply one or more provisions of Article 3 to the writing by analogy, taking into account the expectations of the parties and the differences between the writing and an instrument governed by Article 3. Whether such application is appropriate depends upon the facts of each case.

\* \* \*

### **Section 3-107. Instrument Payable in Foreign Money**

\* \* \*

#### **Official Comment**

The definition of instrument in Section 3-104 requires that the promise or order be payable in "money." That term is defined in Section ~~1-201(24)~~[1-201\(b\)\(24\)](#) and is not limited to United States dollars. Section 3-107 states that an instrument payable in foreign money may be paid in dollars if the instrument does not prohibit it. It also states a conversion rate which applies in the absence of a different conversion rate stated in the instrument. The reference in former Section 3-107(1) to instruments payable in "currency" or "current funds" has been dropped as superfluous.

### **Section 3-110. Identification of Person to Whom Instrument Is Payable**

\* \* \*

#### **Official Comment**

\* \* \*

2. Subsection (c) allows the payee to be identified in any way including the various ways stated. Subsection (c)(1) relates to instruments payable to bank accounts. In some cases the account might be identified by name and number, and the name and number might refer to different persons. For example, a check is payable to “X Corporation Account No. 12345 in Bank of Podunk.” Under the last sentence of subsection (c)(1), this check is payable to X Corporation and can be negotiated by X Corporation even if Account No. 12345 is some other person’s account or the check is not deposited in that account. In other cases the payee is identified by an account number and the name of the owner of the account is not stated. For example, Debtor pays Creditor by issuing a check drawn on Payor Bank. The check is payable to a bank account owned by Creditor but identified only by number. Under the first sentence of subsection (c)(1) the check is payable to Creditor and, under Section ~~1-201(20)~~1-201(b)(21), Creditor becomes the holder when the check is delivered. Under Section 3-201(b), further negotiation of the check requires the indorsement of Creditor. But under Section 4-205(a), if the check is taken by a depository bank for collection, the bank may become a holder without the indorsement. Under Section 3-102(b), provisions of Article 4 prevail over those of Article 3. The depository bank warrants that the amount of the check was credited to the payee’s account.

\* \* \*

4. Subsection (d) replaces former Section 3-116. An instrument payable to X or Y is governed by the first sentence of subsection (d). An instrument payable to X and Y is governed by the second sentence of subsection (d). If an instrument is payable to X or Y, either is the payee and if either is in possession that person is the holder and the person entitled to enforce the instrument. Section 3-301. If an instrument is payable to X and Y, neither X nor Y acting alone is the person to whom the instrument is payable. Neither person, acting alone, can be the holder of the instrument. The instrument is “payable to an identified person.” The “identified person” is X and Y acting jointly. Section 3-109(b) and Section ~~1-102(5)(a)~~1-106(1). Thus, under Section ~~1-201(20)~~1-201(b)(21) X or Y, acting alone, cannot be the holder or the person entitled to enforce or negotiate the instrument because neither, acting alone, is the identified person stated in the instrument.

\* \* \*

### **Section 3-201. Negotiation**

\* \* \*

#### **Official Comment**

1. Subsections (a) and (b) are based in part on subsection (1) of former Section 3-202. A person can become holder of an instrument when the instrument is issued to that person, or the status of holder can arise as the result of an event that occurs after issuance. “Negotiation” is the term used in Article 3 to describe this post-issuance event. Normally, negotiation occurs as the result of a voluntary transfer of possession of an instrument by a holder to another person who becomes the holder as a result of the transfer. Negotiation always requires a change in possession

of the instrument because nobody can be a holder without possessing the instrument, either directly or through an agent. But in some cases the transfer of possession is involuntary and in some cases the person transferring possession is not a holder. In defining “negotiation” former Section 3-202(1) used the word “transfer,” an undefined term, and “delivery,” defined in Section ~~1-201(14)~~[1-201\(b\)\(15\)](#) to mean voluntary change of possession. Instead, subsections (a) and (b) use the term “transfer of possession” and, subsection (a) states that negotiation can occur by an involuntary transfer of possession. For example, if an instrument is payable to bearer and it is stolen by Thief or is found by Finder, Thief or Finder becomes the holder of the instrument when possession is obtained. In this case there is an involuntary transfer of possession that results in negotiation to Thief or Finder.

\* \* \*

### **Section 3-205. Special Indorsement; Blank Indorsement; Anomalous Indorsement**

\* \* \*

#### **Official Comment**

\* \* \*

4. Articles 14 and 16 of the Convention on International Bills of Exchange and International Promissory Notes ~~includes~~[include](#) similar rules for blank and special indorsements.

### **Section 3-207. Reacquisition**

\* \* \*

#### **Official Comment**

\* \* \*

*Case # 1.* X, a former holder, buys the instrument from Y, the present holder. Y delivers the instrument to X but fails to indorse it. Negotiation does not occur because the transfer of possession did not result in X’s becoming holder. Section 3-201(a). The instrument by its terms is payable to Y, not to X. But X can obtain the status of holder by striking X’s indorsement and all subsequent indorsements. When these indorsements are struck, the instrument by its terms is payable either to X or to bearer, depending upon how X originally became holder. In either case X becomes holder. Section ~~1-201(20)~~[1-201\(b\)\(21\)](#).

\* \* \*

### **Section 3-303. Value and Consideration**

\* \* \*

#### **Official Comment**

1. Subsection (a) is a restatement of former Section 3-303 and subsection (b) replaces former Section 3-408. The distinction between value and consideration in Article 3 is a very fine one. Whether an instrument is taken for value is relevant to the issue of whether a holder is a holder in due course. If an instrument is not issued for consideration the issuer has a defense to the obligation to pay the instrument. Consideration is defined in subsection (b) as “any consideration sufficient to support a simple contract.” The definition of value in Section ~~1-201(44)~~[1-204](#), which doesn’t apply to Article 3, includes “any consideration sufficient to support a simple contract.” Thus, outside Article 3, anything that is consideration is also value. A different rule applies in Article 3. Subsection (b) of Section 3-303 states that if an instrument is issued for value it is also issued for consideration.

\* \* \*

### **Section 3-305. Defenses and Claims in Recoupment**

\* \* \*

#### **Official Comment**

\* \* \*

Subsection (a)(1)(iv) states specifically that the defense of discharge in insolvency proceedings is not cut off when the instrument is purchased by a holder in due course. ~~“Insolvency proceedings”~~[An “insolvency proceeding”](#) is defined in Section ~~1-201(22)~~[1-201\(b\)\(22\)](#) and it includes bankruptcy whether or not the debtor is insolvent. Subsection (2)(e) of former Section 3-305 is omitted. The substance of that provision is stated in Section 3-601(b).

\* \* \*

### **Section 3-307. Notice of Breach of Fiduciary Duty**

\* \* \*

#### **Official Comment**

\* \* \*

2. \* \* \*

Section 3-307(b) applies only if the person dealing with the fiduciary “has knowledge of the fiduciary status of the fiduciary.” Notice which does not amount to knowledge is not enough to cause Section 3-307 to apply. “Knowledge” is defined in Section ~~1-201(25)~~[1-202\(b\)](#). In most cases, the “taker” referred to in Section 3-307 will be a bank or other organization. Knowledge of an organization is determined by the rules stated in Section ~~1-201(27)~~[1-202\(f\)](#). In many cases, the individual who receives and processes an instrument on behalf of the organization that is the taker of the instrument “for payment or collection or for value” is a clerk who has no knowledge of any fiduciary status of the person from whom the instrument is received. In such cases, Section 3-307 doesn’t apply because, under Section ~~1-201(27)~~[1-202\(f\)](#), knowledge of the organization is determined by the knowledge of the “individual conducting that transaction,” i.e. the clerk who receives and processes the instrument. Furthermore, paragraphs (2) and (4) each require that the person acting for the organization have knowledge of facts that indicate a breach of fiduciary duty. In the case of an instrument taken for deposit to an account, the knowledge is found in the fact that the deposit is made to an account other than that of the represented person or a fiduciary account for benefit of that person. In other cases the person acting for the organization must know that the instrument is taken in payment or as security for a personal debt of the fiduciary or for the personal benefit of the fiduciary. For example, if the instrument is being used to buy goods or services, the person acting for the organization must know that the goods or services are for the personal benefit of the fiduciary. The requirement that the taker have knowledge rather than notice is meant to limit Section 3-307 to relatively uncommon cases in which the person who deals with the fiduciary knows all the relevant facts: the fiduciary status and that the proceeds of the instrument are being used for the personal debt or benefit of the fiduciary or are being paid to an account that is not an account of the represented person or of the fiduciary, as such. Mere notice of these facts is not enough to put the taker on notice of the breach of fiduciary duty and does not give rise to any duty of investigation by the taker.

\* \* \*

### **Section 3-308. Proof of Signatures and Status as Holder in Due Course**

\* \* \*

#### **Official Comment**

\* \* \*

The question of the burden of establishing the signature arises only when it has been put in issue by specific denial. “Burden of establishing” is defined in Section ~~1-201~~[1-201\(b\)\(8\)](#). The burden is on the party claiming under the signature, but the signature is presumed to be authentic



and authorized except as stated in the second sentence of subsection (a). Pursuant to Section 1-206, ~~“Presumed” is defined in Section 1-201 and means that~~ until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid. The presumption rests upon the fact that in ordinary experience forged or unauthorized signatures are very uncommon, and normally any evidence is within the control of, or more accessible to, the defendant. The defendant is therefore required to make some sufficient showing of the grounds for the denial before the plaintiff is required to introduce evidence. The defendant’s evidence need not be sufficient to require a directed verdict, but it must be enough to support the denial by permitting a finding in the defendant’s favor. Until introduction of such evidence the presumption requires a finding for the plaintiff. Once such evidence is introduced the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff. The presumption does not arise if the action is to enforce the obligation of a purported signer who has died or become incompetent before the evidence is required, and so is disabled from obtaining or introducing it. “Action” is defined in Section ~~1-201~~ 1-201(b)(1) and includes a claim asserted against the estate of a deceased or an incompetent.

\* \* \*

### **Section 3-311. Accord and Satisfaction by Use of Instrument**

\* \* \*

#### **Official Comment**

\* \* \*

2. Comment d. to Restatement of Contracts, Section 281 discusses the full satisfaction check and the applicable common law rule. In a case like Case # 1, the buyer can propose a settlement of the disputed bill by a clear notation on the check indicating that the check is tendered as full satisfaction of the bill. Under the common law rule the seller, by obtaining payment of the check accepts the offer of compromise by the buyer. The result is the same if the seller adds a notation to the check indicating that the check is accepted under protest or in only partial satisfaction of the claim. Under the common law rule the seller can refuse the check or can accept it subject to the condition stated by the buyer, but the seller can’t accept the check and refuse to be bound by the condition. The rule applies only to an unliquidated claim or a claim disputed in good faith by the buyer. The dispute in the courts was whether former Section 1-207 changed the common law rule. The Restatement states that section “need not be read as changing this well-established rule.”

3. As part of the revision of Article 3, Section 1-207 ~~was has been~~ amended to add subsection (2) stating that Section 1-207 “does not apply to an accord and satisfaction.” That statement is now in Section 1-308(b). Because of that amendment and revised Article 3, Section 3-311 governs full satisfaction checks. Section 3-311 follows the common law rule with some

minor variations to reflect modern business conditions. In cases covered by Section 3-311 there will often be an individual on one side of the dispute and a business organization on the other. This section is not designed to favor either the individual or the business organization. In Case # 1 the person seeking the accord and satisfaction is an individual. In Case # 2 the person seeking the accord and satisfaction is an insurance company. Section 3-311 is based on a belief that the common law rule produces a fair result and that informal dispute resolution by full satisfaction checks should be encouraged.

4. \* \* \*

The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met. If that person also proves that the statement required by subsection (b) was given, the claim is discharged unless subsection (c) applies. Normally the statement required by subsection (b) is written on the check. Thus, the canceled check can be used to prove the statement as well as the fact that the claimant obtained payment of the check. Subsection (b) requires a “conspicuous” statement that the instrument was tendered in full satisfaction of the claim. “Conspicuous” is defined in Section ~~1-201(10)~~1-201(b)(10). ~~The statement is conspicuous if “it is so written that a reasonable person against whom it is to operate ought to have noticed it.”~~ If the claimant can reasonably be expected to examine the check, almost any statement on the check should be noticed and is therefore conspicuous. In cases in which the claimant is an individual the claimant will receive the check and will normally indorse it. Since the statement concerning tender in full satisfaction normally will appear above the space provided for the claimant’s indorsement of the check, the claimant “ought to have noticed” the statement.

\* \* \*

7. \* \* \*

A claimant knows that a check was tendered in full satisfaction of a claim when the claimant ~~“has actual~~has “actual knowledge” of that fact. Section ~~1-201(25)~~1-202(b). Under Section ~~1-201(27)~~1-202(f), if the claimant is an organization, it has knowledge that a check was tendered in full satisfaction of the claim when that fact is

“brought to the attention of the individual conducting that transaction, and in any event when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.”

With respect to an attempted accord and satisfaction the “individual conducting that transaction” is an employee or other agent of the organization having direct responsibility with respect to the dispute. For example, if the check and communication are received by a collection agency acting

for the claimant to collect the disputed claim, obtaining payment of the check will result in an accord and satisfaction even if the claimant gave notice, pursuant to subsection (c)(1), that full satisfaction checks be sent to some other office. Similarly, if a customer asserting a claim for breach of warranty with respect to defective goods purchased in a retail outlet of a large chain store delivers the full satisfaction check to the manager of the retail outlet at which the goods were purchased, obtaining payment of the check will also result in an accord and satisfaction. On the other hand, if the check is mailed to the chief executive officer of the chain store subsection (d) would probably not be satisfied. The chief executive officer of a large corporation may have general responsibility for operations of the company, but does not normally have direct responsibility for resolving a small disputed bill to a customer. A check for a relatively small amount mailed to a high executive officer of a large organization is not likely to receive the executive's personal attention. Rather, the check would normally be routinely sent to the appropriate office for deposit and credit to the customer's account. If the check does receive the personal attention of the high executive officer and the officer is aware of the full-satisfaction language, collection of the check will result in an accord and satisfaction because subsection (d) applies. In this case the officer has assumed direct responsibility with respect to the disputed transaction.

If a full satisfaction check is sent to a lock box or other office processing checks sent to the claimant, it is irrelevant whether the clerk processing the check did or did not see the statement that the check was tendered as full satisfaction of the claim. Knowledge of the clerk is not imputed to the organization because the clerk has no responsibility with respect to an accord and satisfaction. Moreover, there is no failure of "due diligence" under Section ~~1-201(27)~~[1-202\(f\)](#) if the claimant does not require its clerks to look for full satisfaction statements on checks or accompanying communications. Nor is there any duty of the claimant to assign that duty to its clerks. Section 3-311(c) is intended to allow a claimant to avoid an inadvertent accord and satisfaction by complying with either subsection (c)(1) or (2) without burdening the check-processing operation with extraneous and wasteful additional duties.

\* \* \*

### **Section 3-312. Lost, Destroyed, or Stolen Cashier's Check, Teller's Check, or Certified Check**

\* \* \*

#### **Official Comment**

\* \* \*

3. \* \* \*

An obligated bank that pays the amount of a check to a claimant under subsection (b)(4) is discharged of all liability on the check so long as the assertion of the claim meets the

requirements of subsection (b) discussed in Comment 2. This is important in cases of fraudulent declarations of loss. For example, if the claimant falsely alleges a loss that in fact did not occur, the bank, subject to Section ~~1-203~~[1-304](#), may rely on the declaration of loss. On the other hand, a claim may be asserted only by a person described in subsection (b)(i). Thus, the bank is discharged under subsection (a)(4) only if it pays such a person. Although it is highly unlikely, it is possible that more than one person could assert a claim under subsection (b) to the amount of a check. Such a case could occur if one of the claimants makes a false declaration of loss. The obligated bank is not required to determine whether a claimant who complies with subsection (b) is acting wrongfully. The bank may utilize procedures outside this Article, such as interpleader, under which the conflicting claims may be adjudicated.

\* \* \*

### **Section 3-402. Signature by Representative**

\* \* \*

#### **Official Comment**

\* \* \*

3. Subsection (c) is directed at the check cases. It states that if the check identifies the represented person the agent who signs on the signature line does not have to indicate agency status. Virtually all checks used today are in personalized form which identify the person on whose account the check is drawn. In this case, nobody is deceived into thinking that the person signing the check is meant to be liable. This subsection is meant to overrule cases decided under former Article 3 such as *Griffin v. Ellinger*, 538 S.W.2d 97 (~~Texas~~[Tex.](#) 1976).

### **Section 3-403. Unauthorized Signature**

\* \* \*

#### **Official Comment**

1. ~~“Unauthorized” signature~~ [“Unauthorized signature”](#) is defined in Section ~~1-201(43)~~[1-201\(b\)\(41\)](#) as one that includes a forgery as well as a signature made by one exceeding actual or apparent authority. Former Section 3-404(1) stated that an unauthorized signature was inoperative as the signature of the person whose name was signed unless that person “is precluded from denying it.” Under former Section 3-406 if negligence by the person whose name was signed contributed to an unauthorized signature, that person “is precluded from asserting the \*\*\* lack of authority.” Both of these sections were applied to cases in which a forged signature appeared on an instrument and the person asserting rights on the instrument alleged that the negligence of the purported signer contributed to the forgery. Since the standards

for liability between the two sections differ, the overlap between the sections caused confusion. Section 3-403(a) deals with the problem by removing the preclusion language that appeared in former Section 3-404.

\* \* \*

4. \* \* \*

Subsection (b) refers to “the authorized signature of an organization.” The definition of “organization” in Section ~~1-201(28)~~1-201(b)(25) is very broad. It covers not only commercial entities but also “two or more persons having a joint or common interest.” Hence subsection (b) would apply when a husband and wife are both required to sign an instrument.

### **Section 3-413. Obligation of Acceptor**

\* \* \*

#### **Official Comment**

Subsection (a) is consistent with former Section 3-413(1). Subsection (b) has primary importance with respect to certified checks. It protects the holder in due course of a certified check that was altered after certification and before negotiation to the holder in due course. A bank can avoid liability for the altered amount by stating on the check the amount the bank agrees to pay. The subsection applies to other accepted drafts as well. The rule of this section is similar to the rule of ~~Articles~~Article 41 of the Convention on International Bills of Exchange and International Promissory Notes. Articles 42 and 43 of the Convention include more detailed rules that in many respects do not have parallels in this Article.

### **Section 3-416. Transfer Warranties**

\* \* \*

#### **Official Comment**

\* \* \*

4. Under subsection (a)(5) the transferor does not warrant against difficulties of collection, impairment of the credit of the obligor or even insolvency. The transferee is expected to determine such questions before taking the obligation. If an insolvency proceeding ~~proceedings proceeding~~ as defined in Section ~~1-201(22)~~1-201(b)(22) ~~have~~has been instituted against the party who is expected to pay and the transferor knows it, the concealment of that fact amounts to a fraud upon the transferee, and the warranty against knowledge of such proceedings is provided accordingly.

\* \* \*

### **Section 3-502. Dishonor**

\* \* \*

#### **Official Comment**

\* \* \*

5. Subsection (c) gives drawees an extended period to pay documentary drafts because of the time that may be needed to examine the documents. ~~The period prescribed is that given by Section 5-112 in cases in which a letter of credit is involved.~~

\* \* \*

### **Section 3-604. Discharge by Cancellation or Renunciation**

\* \* \*

#### **Official Comment**

\* \* \*

3. Former subsection (c) has been deleted as unnecessary in view of the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#).

### **Section 3-605. Discharge of Secondary Obligor**

\* \* \*

#### **Official Comment**

\* \* \*

5. Subsection (b) is based on *Restatement of Suretyship and Guaranty* § 40 and relates to extensions of the due date of the instrument. An extension of time to pay a note is often beneficial to the secondary obligor because the additional time may enable the principal obligor to obtain the funds to pay the instrument. In some cases, however, the extension may cause loss to the secondary obligor, particularly if deterioration of the financial condition of the principal obligor reduces the amount that the secondary obligor is able to recover on its right of recourse

when default occurs. For example, suppose that the instrument is an installment note and the principal debtor is temporarily short of funds to pay a monthly installment. The payee agrees to extend the due date of the installment for a month or two to allow the debtor to pay when funds are available. Paragraph (b)(2) provides that an extension of time results in a discharge of the secondary obligor, but only to the extent that the secondary obligor proves that the extension caused loss. See subsection (h) (discussing the burden of proof under Section 3-605). Thus, if the extension is for a long period, the secondary obligor might be able to prove that during the period of extension the principal obligor became insolvent, reducing the value of the right of recourse of the secondary obligor. In such a case, paragraph (b)(2) discharges the secondary obligor to the extent of that harm. Although not required to notify the secondary obligor of the extension, the payee can minimize the risk of loss by the secondary obligor by giving the secondary obligor prompt notice of the extension; prompt notice can enhance the likelihood that the secondary obligor's right of recourse can remain valuable, and thus can limit the likelihood that the secondary obligor will suffer a loss because of the extension. See *Restatement of Suretyship and Guaranty* ~~Section~~ [§ 38](#) comment b.

\* \* \*

## ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS

### Section 4-102. Applicability

\* \* \*

#### Official Comment

\* \* \*

1. \* \* \*

Section 4-210 deals specifically with overlapping problems and possible conflicts between this Article and Article 9. However, similar reconciling provisions are not necessary in the case of Articles 5 and 7. Sections 4-301 and 4-302 are consistent with Section ~~5-112~~[5-108](#). In the case of Article 7 documents of title frequently accompany items but they are not themselves items. See Section 4-104(a)(9).

\* \* \*

2. \* \* \*

c. The phrase “action or non-action with respect to any item handled by it for purposes of presentment, payment or collection” is intended to make the conflicts rule of subsection (b) apply from the inception of the collection process of an item through all phases of deposit, forwarding, presentment, payment and remittance or credit of proceeds. Specifically the subsection applies to the initial act of a depository bank in receiving an item and to the incidents of such receipt. The conflicts rule of *Weissman v. Banque De Bruxelles*, 254 N.Y. 488, 173 N.E. 835 (1930), is rejected. The subsection applies to questions of possible vicarious liability of a bank for action or non-action of sub-agents (see Section 4-202(c)) and tests these questions by the law of the state of the location of the bank which uses the sub-agent. The conflicts rule of *St. Nicholas Bank of New York v. State Nat. Bank*, ~~128 N.Y. 26~~, 27 N.E. 849, ~~13 L.R.A. 241~~ ([N.Y.](#) 1891), is rejected. The subsection applies to action or non-action of a payor bank in connection with handling an item (see Sections 4-215(a), 4-301, 4-302, 4-303) as well as action or non-action of a collecting bank (Sections 4-201 through 4-216); to action or non-action of a bank which suspends payment or is affected by another bank suspending payment (Section 4-216); to action or non-action of a bank with respect to an item under the rule of Part 4 of Article 4.

d. In a case in which subsection (b) makes this Article applicable, Section 4-103(a) leaves open the possibility of an agreement with respect to applicable law. This freedom of agreement follows the general policy of Section ~~1-105~~[1-301](#).

#### Cross References:



Sections ~~1-105~~1-301; 3-103(2) and Article 3; all sections of Article 4; ~~5-112~~5-108; Article 7; 8-108 and ~~8-304~~ and ~~8-306~~; Article 9.

\* \* \*

### **Section 4-103. Variation by Agreement; Measure of Damages; Action Constituting Ordinary Care**

\* \* \*

#### **Official Comment**

\* \* \*

1. Section ~~1-102~~1-302 states the general principles and rules for variation of the effect of this Act by agreement and the limitations to this power. Section 4-103 states the specific rules for variation of Article 4 by agreement and also certain standards of ordinary care. In view of the technical complexity of the field of bank collections, the enormous number of items handled by banks, the certainty that there will be variations from the normal in each day's work in each bank, the certainty of changing conditions and the possibility of developing improved methods of collection to speed the process, it would be unwise to freeze present methods of operation by mandatory statutory rules. This section, therefore, permits within wide limits variation of the effect of provisions of the Article by agreement.

2. Subsection (a) confers blanket power to vary all provisions of the Article by agreements of the ordinary kind. The agreements may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care and may not limit the measure of damages for the lack or failure, but this subsection like Section ~~1-102(3)~~1-302(b) approves the practice of parties determining by agreement the standards by which the responsibility is to be measured. In the absence of a showing that the standards manifestly are unreasonable, the agreement controls. Owners of items and other interested parties are not affected by agreements under this subsection unless they are parties to the agreement or are bound by adoption, ratification, estoppel or the like.

As here used "agreement" has the meaning given to it by Section ~~1-201(3)~~1-201(b)(3). The agreement may be direct, as between the owner and the depository bank; or indirect, as in the case in which the owner authorizes a particular type of procedure and any bank in the collection chain acts pursuant to such authorization. It may be with respect to a single item; or to all items handled for a particular customer, e.g., a general agreement between the depository bank and the customer at the time a deposit account is opened. Legends on deposit tickets, collection letters and acknowledgments of items, coupled with action by the affected party constituting acceptance, adoption, ratification, estoppel or the like, are agreements if they meet the tests of the definition of "agreement". See Section ~~1-201(3)~~1-201(b)(3). *First Nat. Bank of Denver v. Federal Reserve Bank*, 6 F.2d 339 (8th Cir. 1925) (deposit slip); *Jefferson County*

*Bldg. Ass'n v. Southern Bank & Trust Co.*, ~~225 Ala. 25~~, 142 So. 66 (Ala. 1932) (signature card and deposit slip); *Semingson v. Stock Yards Nat. Bank*, ~~162 Minn. 424~~, 203 N.W. 412 (Minn. 1925) (passbook); *Farmers State Bank v. Union Nat. Bank*, ~~42 N.D. 449, 454~~, 173 N.W. 789, 790 (N.D. 1919) (acknowledgment of receipt of item).

3. Subsection (a) (subject to its limitations with respect to good faith and ordinary care) goes far to meet the requirements of flexibility. However, it does not by itself confer fully effective flexibility. Since it is recognized that banks handle a great number of items every business day and that the parties interested in each item include the owner of the item, the drawer (if it is a check), all nonbank indorsers, the payor bank and from one to five or more collecting banks, it is obvious that it is impossible, practically, to obtain direct agreements from all of these parties on all items. In total, the interested parties constitute virtually every adult person and business organization in the United States. On the other hand they may become bound to agreements on the principle that collecting banks acting as agents have authority to make binding agreements with respect to items being handled. This conclusion was assumed but was not flatly decided in *Federal Reserve Bank of Richmond v. Malloy*, 264 U.S. 160, ~~at 167~~, ~~44 S.Ct. 296~~, ~~at 298~~, ~~68 L. Ed. 617~~, ~~31 A.L.R. 1261~~ (1924).

\* \* \*

4. Under this Article banks come under the general obligations of the use of good faith and the exercise of ordinary care. “Good faith” is defined in Section 1-201(b)(20). The term “ordinary care” is defined in Section 3-103(a)~~(7)~~(9). These definitions are made to apply to Article 4 by Section 4-104(c). Section 4-202 states respects in which collecting banks must use ordinary care. Subsection (c) of Section 4-103 provides that action or non-action approved by the Article or pursuant to Federal Reserve regulations or operating circulars constitutes the exercise of ordinary care. Federal Reserve regulations and operating circulars constitute an affirmative standard of ordinary care equally with the provisions of Article 4 itself.

Subsection (c) further provides that, absent special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by the Article, *prima facie* constitutes the exercise of ordinary care. Clearing-house rules and the phrase “and the like” have the significance set forth above in these Comments. The term “general banking usage” is not defined but should be taken to mean a general usage common to banks in the area concerned. See Section ~~1-205(2)~~1-303(c). In a case in which the adjective “general” is used, the intention is to require a usage broader than a mere practice between two or three banks but it is not intended to require anything as broad as a country-wide usage. A usage followed generally throughout a state, a substantial portion of a state, a metropolitan area or the like would certainly be sufficient. Consistently with the principle of Section ~~1-205(3)~~1-303(c), action or non-action consistent with clearing house rules or the like or with banking usages *prima facie* constitutes the exercise of ordinary care. However, the phrase “in the absence of special instructions” affords owners of items an opportunity to prescribe other standards and although there may be no direct supervision or control of clearing houses or banking usages by official supervisory authorities, the confirmation of ordinary care by compliance with these standards is *prima facie* only, thus conferring on the courts the ultimate power to determine ordinary care in

any case in which it should appear desirable to do so. The *prima facie* rule does, however, impose on the party contesting the standards to establish that they are unreasonable, arbitrary or unfair as used by the particular bank.

\* \* \*

6. Subsection (e) sets forth a rule for determining the measure of damages for failure to exercise ordinary care which, under subsection (a), cannot be limited by agreement. In the absence of bad faith the maximum recovery is the amount of the item concerned. The term “bad faith” is not defined; the connotation is the absence of good faith (Section ~~3-103~~[1-201\(b\)\(20\)](#)). When it is established that some part or all of the item could not have been collected even by the use of ordinary care the recovery is reduced by the amount that would have been in any event uncollectible. This limitation on recovery follows the case law. Finally, if bad faith is established the rule opens to allow the recovery of other damages, whose “proximateness” is to be tested by the ordinary rules applied in comparable cases. Of course, it continues to be as necessary under subsection (e) as it has been under ordinary common law principles that, before the damage rule of the subsection becomes operative, liability of the bank and some loss to the customer or owner must be established.

#### **Cross References:**

Sections ~~1-102(3), 1-203, 1-205~~[1-201, 1-302, 1-303, 3-103, 4-102, 4-103, 4-104, and 4-202.](#)

#### **Definitional Cross References:**

“Bank”. Section 1-201.

“Good faith”. Section 1-201.

“Item”. Section 4-104.

“Usage”. Section ~~1-205~~[1-303](#).

### **Section 4-104. Definitions and Index of Definitions**

\* \* \*

#### **Official Comment**

\* \* \*

5. Paragraph (a)(6): “Documentary draft” applies even though the documents do not accompany the draft but are to be received by the drawee or other payor before acceptance or payment of the draft. Documents may be either in electronic or tangible form. See Article 5, Section 5-102, Comment 2 and Article 1, Section ~~1-201~~[1-201\(b\)\(16\)](#) (definition of “document of title”).

\* \* \*

**Definitional Cross References:**

- “Bank”. Section 1-201.
- “Documents”. Section 1-201.
- “Money”. Section 1-201.
- “Negotiable”. Section 3-104.
- “Notice”. Section ~~1-201~~[1-202](#).
- “Person”. Section 1-201.
- “Securities”. Section 8-102.

**Section 4-105. Definitions of Types of Banks**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

~~Article 3, especially Sections 3-120 and 3-121.~~

**Definitional Cross References:**

- “Bank”. Section 1-201.
- “Customer”. Section 4-104.
- [“Drawee”. Section 4-104.](#)
- “Item”. Section 4-104.
- [“Order”. Section 3-103.](#)

**Section 4-107. Separate Office of Bank**

\* \* \*

**Official Comment**

\* \* \*

4. Assuming that it is not desirable to make each branch a separate bank for all purposes, this section provides that a branch or separate office is a separate bank for certain purposes. In so doing the single legal entity of the bank as a whole is preserved, thereby carrying with it the

liability of the institution as a whole on such obligations as it may be under. On the other hand, in cases in which the Article provides a number of time limits for different types of action by banks, if a branch functions as a separate bank, it should have the time limits available to a separate bank. Similarly if in its relations to customers a branch functions as a separate bank, notices and orders with respect to accounts of customers of the branch should be given at the branch. For example, whether a branch has notice sufficient to affect its status as a holder in due course of an item taken by it should depend upon what notice that branch has received with respect to the item. Similarly the receipt of a stop payment order at one branch should not be notice to another branch so as to impair the right of the second branch to be a holder in due course of the item, although in circumstances in which ordinary care requires the communication of a notice or order to the proper branch of a bank, the notice or order would be effective at the proper branch from the time it was or should have been received. See Section ~~1-201(27)~~[1-202](#).

\* \* \*

#### **Cross References:**

Sections ~~3-504, 4-102(2)~~[1-202, 4-106, 4-207, 4-208](#).

\* \* \*

#### **Section 4-109. Delays**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Sections ~~3-103(2), 3-503, 3-506, 4-102(1)~~, 4-103, ~~4-104~~, 4-202~~(2)(b)~~, ~~4-212~~, 4-213, [4-214](#), 4-301, 4-302.

\* \* \*

#### **Section 4-110. Electronic Presentment**

\* \* \*

#### **Official Comment**

1. “An “agreement for electronic presentment” refers to an agreement under which presentment may be made to a payor bank by a presentment notice rather than by presentment of the item. Under imaging technology now under development, the presentment notice might be an image of the item. The electronic presentment agreement may provide that the item may be retained by a depository bank, other collecting bank, or even a customer of the depository bank, or it may provide that the item will follow the presentment notice. The identifying characteristic of an electronic presentment agreement is that presentment occurs when the presentment notice is received. “An “agreement for electronic presentment” does not refer to the common case of retention of items by payor banks because the item itself is presented to the payor bank in these cases. Payor bank check retention is a matter of agreement between payor banks and their customers. Provisions on payor bank check retention are found in Section 4-406(b).

\* \* \*

**Cross References:**

Sections 4-103, 4-406.

**Section 4-111. Statute of Limitations**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Section 3-118.

**Section 4-201. Status of Collecting Bank as Agent and Provisional Status of Credits; Applicability of Article; Item Indorsed “Pay Any Bank”**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections ~~3-206, 3-208, 3-207~~, 4-103, 4-201, 4-206, ~~4-208, 4-210, 4-212~~, 4-213, 4-214, 4-215, 4-216, 4-302.

### **Definitional Cross References:**

“Bank”. Section 1-201.  
“Collecting bank”. Section 4-105.  
“Customer”. Section 4-104.  
“Depository bank”. Section 4-105.  
“Holder”. Section 1-201.  
“Item”. Section 4-104.  
“Indorsements”. Sections ~~3-202~~, 3-204, 3-205 and 3-206.  
“Person”. Section 1-201.  
“Settle”. Section 4-104.

### **Section 4-202. Responsibility for Collection or Return; When Action Timely**

\* \* \*

#### **Official Comment**

\* \* \*

1. Subsection (a) states the basic responsibilities of a collecting bank. Of course, under Section ~~1-203~~[1-304](#) a collecting bank is subject to the standard requirement of good faith. By subsection (a) it must also use ordinary care in the exercise of its basic collection tasks. By Section 4-103(a) neither requirement may be disclaimed.

\* \* \*

### **Cross References:**

Sections ~~1-203~~[1-304](#), [3-501](#), 4-103, ~~4-107~~, 4-108, [4-109](#), [4-204](#), [4-212](#), 4-301, and 4-302.

### **Definitional Cross References:**

“Collecting bank”. Section 4-105.  
“Depository bank”. Section 4-105.  
“Documentary draft”. Section 4-104.  
“Item”. Section 4-104.  
“Midnight deadline”. Section 4-104.  
“Presentment”. ~~Article 3, Part 5~~[Section 3-501](#).  
~~“Protest”. Section 3-509.~~

### **Section 4-203. Effect of Instructions**

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections ~~3-205~~, 3-206, ~~3-419~~, ~~3-603~~, 3-420, 4-103(1)(a) and ~~4-205~~.

#### Definitional Cross References:

“Collecting bank”. Section 4-105.

“Restrictive indorsement”. Section ~~3-205~~3-206.

### Section 4-204. Methods of Sending and Presenting; Sending Directly to Payor Bank

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections ~~3-504~~, ~~4-501~~ and ~~4-502~~3-501, 4-203.

\* \* \*

### Section 4-205. Depository Bank Holder of Unindorsed Item

\* \* \*

### Official Comment

\* \* \*

Section 3-201(b) provides that negotiation of an instrument payable to order requires indorsement by the holder. The rule of former Section 4-205(1) was that the depository bank may supply a missing indorsement of its customer unless the item contains the words “payee’s indorsement required” or the like. The cases have differed on the status of the depository bank as a holder if it fails to supply its customer’s indorsement. *Marine Midland Bank*, ~~N.A.~~ v. *Price*,



*Miller, Evans & Flowers*, 446 N.Y.S.2d 797 (~~N.Y.App. Div. 4th Dept~~[N.Y. App. Div.](#) 1981), *rev'd*, 455 N.Y.S.2d 565 (N.Y. 1982). It is common practice for depositary banks to receive unindorsed checks under so-called “lock-box” agreements from customers who receive a high volume of checks. No function would be served by requiring a depositary bank to run these items through a machine that would supply the customer’s indorsement except to afford the drawer and the subsequent banks evidence that the proceeds of the item reached the customer’s account. Paragraph (1) provides that the depositary bank becomes a holder when it takes the item for deposit if the depositor is a holder. Whether it supplies the customer’s indorsement is immaterial. Paragraph (2) satisfies the need for a receipt of funds by the depositary bank by imposing on that bank a warranty that it paid the customer or deposited the item to the customer’s account. This warranty runs not only to collecting banks and to the payor bank or nonbank drawee but also to the drawer, affording protection to these parties that the depositary bank received the item and applied it to the benefit of the holder.

**Cross References:**

Sections ~~3-205, 3-206, 3-419, 3-603, 4-203~~[3-201, 3-302](#).

**Definitional Cross References:**

["Account". Section 4-104.](#)  
“Collecting bank.” Section 4-105.  
“Customer.” Section 4-104.  
“Depositary bank.” Section 4-105.  
["Drawer". Section 3-103.](#)  
["Holder". Section 1-201.](#)  
["Holder in due course". Section 3-302.](#)  
“Intermediary bank.” Section 4-105.  
“Item.” Section 4-104.  
“Payor bank.” Section 4-105.  
~~“Restrictive indorsement.” Section 3-205.~~

**Section 4-206. Transfer Between Banks**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections ~~3-201, 3-202~~.

\* \* \*

## Section 4-207. Transfer Warranties

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections ~~3-201, 3-414, 3-417, 3-418, 4-206,~~ [3-115, 3-305, 3-407, 3-416](#), 4-208, 4-209 ~~and 4-406~~.

#### Definitional Cross References:

“Collecting bank”. Section 4-105.

“Customer”. Section 4-104.

“Draft”. Section 3-104.

“Genuine”. Section 1-201.

“Good faith”. Section 1-201.

“Holder”. Section 1-201.

“Holder in due course”. Section 3-302.

“Insolvency proceedings”. Section 1-201.

“Item”. Section 4-104.

“Party”. Section 1-201.

“Payor bank”. Section 4-105.

“Person”. Section 1-201.

“Presentment”. Section 3-504.

~~“Protest”. Section 3-509.~~

“Unauthorized signature”. Section 1-201.

## Section 4-208. Presentment Warranties

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Sections 3-104, 3-404, 3-405, 3-407, 3-416, 3-417.

## Section 4-209. Encoding and Retention Warranties

\* \* \*

### Official Comment

\* \* \*

2. A misencoding of the amount on the MICR line is not an alteration under Section 3-407(a) which defines alteration as changing the contract of the parties. If a drawer wrote a check for \$2,500 and the depository bank encoded \$25,000 on the MICR line, the payor bank could debit the drawer's account for only \$2,500. This subsection would allow the payor bank to hold the depository bank liable for the amount paid out over \$2,500 without first pursuing the person who received payment. Intervening collecting banks would not be liable to the payor bank for the depository bank's error. If a drawer wrote a check for \$25,000 and the depository bank encoded \$2,500, the payor bank becomes liable for the full amount of the check. The payor bank's rights against the depository bank depend on whether the payor bank has suffered a loss. Since the payor bank can debit the drawer's account for \$25,000, the payor bank has a loss only to the extent that the drawer's account is less than the full amount of the check. There is no requirement that the payor bank pursue collection against the drawer beyond the amount in the drawer's account as a condition to the payor bank's action against the depository bank for breach of warranty. See *Georgia Railroad Bank & Trust Co. v. First National Bank & Trust*, 229 S.E.2d 482 (Ga. Ct. App. 1976), *aff'd*, 235 S.E.2d 1 (Ga. 1977), and *First National Bank of Boston v. Fidelity Bank, National Association*, 724 F.Supp.F. Supp. 1168 (E.D. Pa. 1989).

\* \* \*

### [Cross References:](#)

[Sections 3-407, 4-110.](#)

## Section 4-210. Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

\* \* \*

### Official Comment

\* \* \*

1. Subsection (a) states a rational rule for the interest of a bank in an item. The customer of the depository bank is normally the owner of the item and the several collecting banks are

agents of the customer (Section 4-201). A collecting agent may properly make advances on the security of paper held for collection, and acquires at common law a possessory lien for these advances. Subsection (a) applies an analogous principle to a bank in the collection chain which extends credit on items in the course of collection. The bank has a security interest to the extent stated in this section. To the extent of its security interest it is a holder for value (Sections 3-303, 4-211) and a holder in due course if it satisfies the other requirements for that status (Section 3-302). Subsection (a) does not derogate from the banker's general common law lien or right of setoff against indebtedness owing in deposit accounts. See Section ~~1-103~~[1-103\(b\)](#). Rather subsection (a) specifically implements and extends the principle as a part of the bank collection process.

\* \* \*

#### **Cross References:**

Sections [1-103](#), 3-302, 3-303, ~~4-201, 4-209, 4-211~~, 9-203~~(1)(b)(b)(3)(A)~~ and ~~9-302~~.

\* \* \*

### **Section 4-211. When Bank Gives Value for Purposes of Holder in Due Course**

\* \* \*

#### **Official Comment**

\* \* \*

The section completes the thought of the previous section and makes clear that a security interest in an item is "value" for the purpose of determining the holder's status as a holder in due course. The provision is in accord with the prior law (N.I.L. Section 27) and with Article 3 (Section 3-303). The section does not prescribe a security interest under Section 4-210 as a test of "value" generally because the meaning of "value" under other Articles is adequately defined in Section ~~1-201~~[1-204](#).

#### **Cross References:**

Sections ~~1-201~~[1-204](#), 3-302, 3-303, and ~~4-208~~[4-210](#).

#### **Definitional Cross References:**

"Bank". Section 1-201.

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

"Item". Section 4-104.

"Security interest". Section 1-201.

[“Value”. Section 1-204.](#)

**Section 4-212. Presentment by Notice of Item Not Payable by, Through, or at a Bank; Liability of Drawer or Indorser**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections [3-501](#) ~~through [3-508](#), [4-501](#) and [4-502](#).~~

\* \* \*

**Section 4-213. Medium and Time of Settlement by Bank**

\* \* \*

**Official Comment**

\* \* \*

**Cross Reference:**

Sections ~~[4-213](#)~~ [4-214-215](#), [4A-406](#).

**Definitional Cross References:**

“Account”. Section 4-104.

“Bank”. Section 1-201.

“Clearing house”. Section 4-104.

“Collecting bank”. Section 4-105.

“Item”. Section 4-104.

“Midnight deadline”. Section 4-104.

“Money”. Section 1-201.

“Payor bank”. Section 4-105.

“Person”. Section 1-201.

~~“Remitting bank”. Section 4-105.~~

“Settle”. Section 4-104.

**Section 4-214. Right of Charge-Back or Refund; Liability of Collecting Bank; Return of Item**

\* \* \*

**Official Comment**

\* \* \*

4. Subsection (b) states when an item is returned by a collecting bank. Regulation CC, Section 229.31 preempts this subsection with respect to checks by allowing direct return to the depository bank. Because a returned check may follow a different path than in forward collection, settlement given for the check is final and not provisional except as between the depository bank and its customer. Regulation CC Section 229.36(d). See also Regulations CC Sections 229.31(c) and 229.32(b). Thus owing to the federal preemption, this subsection applies only to noncheck items.

5. The rule of subsection (d) relating to charge-back (as distinguished from claim for refund) applies irrespective of the cause of the nonpayment, and of the person ultimately liable for nonpayment. Thus charge-back is permitted even if nonpayment results from the depository bank's own negligence. Any other rule would result in litigation based upon a claim for wrongful dishonor of other checks of the customer, with potential damages far in excess of the amount of the item. Any other rule would require a bank to determine difficult questions of fact. The customer's protection is found in the general obligation of good faith (Sections ~~1-203~~[1-304](#) and 4-103). If bad faith is established the customer's recovery "includes other damages, if any, suffered by the party as a proximate consequence" (Section 4-103(e); see also Section 4-402).

\* \* \*

**Cross References:**

Sections ~~1-203~~[1-304](#), 3-107, 4-103, ~~4-211(3), 4-213(2) and (3), 4-301,~~ 4-402.

\* \* \*

**Section 4-215. Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal**

\* \* \*

**Official Comment**

\* \* \*

### **Cross References:**

Sections ~~3-418, 4-107, 4-104, 4-109,~~ 4-201, ~~4-211, 4-212, 4-213, 4-214,~~ [4-215](#), [4-216](#), 4-301, 4-302, 4-303.

### **Definitional Cross References:**

“Account”. Section 4-104.

“Agreement”. Section 1-201.

“Banking day”. Section 4-104.

“Clearing house”. Section 4-104.

“Collecting bank”. Section 4-105.

“Customer”. Section 4-104.

“Depository bank”. Section 4-105.

“Item”. Section 4-104.

“Money”. Section 1-201.

“Notice”. Section ~~1-201~~ [1-202](#).

“Payor bank”. Section 4-105.

“Presenting bank”. Section 4-105.

“Settle~~ment~~”. Section 4-104.

## **Section 4-216. Insolvency and Preference**

\* \* \*

### **Official Comment**

\* \* \*

3. It is recognized that in view of *Jennings v. United States Fidelity & Guaranty Co.*, 294 U.S. 216, ~~55 S.Ct. 394, 79 L.Ed. 869, 99 A.L.R. 1248~~ (1935), amendment of the National Bank Act would be necessary to have this section apply to national banks. But there is no reason why it should not apply to others. See Section ~~1-108~~ [1-105](#).

### **Cross References:**

Sections ~~1-108~~ [1-105](#), ~~4-211(3) and 4-213~~.

### **Definitional Cross References:**

“Collecting bank”. Section 4-105.

“Customer”. Section 4-104.

“Item”. Section 4-104.

“Payor bank”. Section 4-105.  
“Presenting bank”. Section 4-105.  
“Settlement”. Section 4-104.  
“Suspends payment”. Section 4-104.

**Section 4-301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor; Return of Items by Payor Bank**

\* \* \*

**Official Comment**

\* \* \*

6. Subsection (d) leaves banks free to agree upon the manner of returning items but establishes a precise time when an item is “returned.” For definition of “sent” as used in paragraphs (1) and (2) see Section ~~1-201(38)~~[1-201\(b\)\(36\)](#). Obviously the subsection assumes that the item has not been “finally paid” under Section 4-215(a). If it has been, this provision has no operation.

\* \* \*

8. Paragraph (a)(2) is designed to facilitate electronic check-processing by authorizing the payor bank to return an image of the item instead of the actual item. It applies only when the payor bank and the party to which the return has been made have agreed that the payor bank can make such a return and when the return complies with the agreement. The purpose of the paragraph is to prevent third parties (such as the depositor of the check) from contending that the payor bank missed its midnight deadline because it failed to return the actual item in a timely manner. If the payor bank missed its midnight deadline, payment would have become final under Section 4-215 and the depositary bank would have lost its right of chargeback under Section 4-214. Of course, the depositary bank might enter into an agreement with its depositor to resolve that problem, but it is not clear that agreements by banks with their customers can resolve all such issues. In any event, paragraph (a)(2) should eliminate the need for such agreements. The provision rests on the premise that it is inappropriate to penalize a payor bank simply because it returns the actual item a few business days after the midnight deadline ~~of~~[if](#) the payor bank sent notice before that deadline to a collecting bank that had agreed to accept such notices.

\* \* \*

**Cross References:**

Sections [1-201](#), ~~3-508~~,[3-418](#), [3-503](#), 4-213, [4-214](#), [4-215](#), [4-301](#), 4-302.

**Definitional Cross References:**



“Banking day”. Section 4-104.  
“Clearing house”. Section 4-104.  
“Collecting bank”. Section 4-105.  
“Customer”. Section 4-104.  
“Documentary draft”. Section 4-104.  
“Item”. Section 4-104.  
“Midnight deadline”. Section 4-104.  
“Notice of dishonor”. Section 3-508.  
“Payor bank”. Section 4-105.  
“Presenting bank”. Section 4-105.  
“Sent”. Section ~~4-201(38)~~[1-201](#).  
“Settlement”. Section 4-104.

### **Section 4-302. Payor’s Bank Responsibility for Late Return of Item**

\* \* \*

#### **Official Comment**

\* \* \*

3. Subsection (b) is an elaboration of the deleted introductory language of former Section 4-302: “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 ... .” A payor bank can defend an action against it based on accountability by showing that the item contained a forged indorsement or a fraudulent alteration. Subsection (b) drops the ambiguous “or the like” language and provides that the payor bank may also raise the defense of fraud. Decisions that hold an accountable bank’s liability to be “absolute” are rejected. A payor bank that makes a late return of an item should not be liable to a defrauder operating a check kiting scheme. In *Bank of Leumi Trust Co. v. Bally’s Park Place Inc.*, 528 ~~F.Supp.~~[F. Supp.](#) 349 (S.D.N.Y. 1981), and *American National Bank v. Foodbasket*, 497 P.2d 546 (Wyo. 1972), banks that were accountable under Section 4-302 for missing their midnight deadline were successful in defending against parties who initiated collection knowing that the check would not be paid. The “settlement effected” language is deleted as unnecessary. If a payor bank is accountable for an item it is liable to pay it. If it has made final payment for an item, it is no longer accountable for the item.

**Cross Reference:** Sections [4-207](#), [4-208](#), [4-213](#), [4-215](#), 4-301, [4-302](#).

\* \* \*

**Section 4-303. When Items Subject to Notice, Stop-Payment Order, Legal Process, or Setoff; Order in Which Items May Be Charged or Certified**

\* \* \*

### Official Comment

\* \* \*

6. In the case of knowledge, notice, stop-payment orders and legal process the effective time for determining whether they were received too late to affect the payment of an item and a charge to the customer's account by reason of such payment, is receipt plus a reasonable time for the bank to act on any of these communications. Usually a relatively short time is required to communicate to the accounting department advice of one of these events but certainly some time is necessary. Compare Sections ~~1-201(27)~~1-202 and 4-403. In the case of setoff the effective time is when the setoff is actually made.

\* \* \*

#### Cross References:

Sections 1-202, ~~3-410~~, ~~3-411~~, ~~4-213(1)~~, 4-108, 4-301, 4-302, 4-403, 4-405.

#### Definitional Cross References:

“Accepted”. Section 3-410.

“Account”. Section 4-104.

“Agreement”. Section 1-201.

“Certified”. Section 3-411,

“Clearing house”. Section 4-104.

“Customer”. Section 4-104.

“Item”. Section 4-104.

“Notice”. Section ~~1-201~~1-202.

“Payor bank”. Section 4-105.

“Settle”. Section 4-104.

### Section 4-401. When Bank May Charge Customer's Account

\* \* \*

### Official Comment

\* \* \*

1. An item is properly payable from a customer's account if the customer has authorized the payment and the payment does not violate any agreement that may exist between the bank

and its customer. For an example of a payment held to violate an agreement with a customer, see *Torrance National Bank v. Enesco Federal Credit Union*, 285 P.2d 737 (~~Cal.App.~~[Cal. Ct. App.](#) 1955). An item drawn for more than the amount of a customer's account may be properly payable. Thus under subsection (a) a bank may charge the customer's account for an item even though payment results in an overdraft. An item containing a forged drawer's signature or forged indorsement is not properly payable. Concern has arisen whether a bank may require a customer to execute a stop-payment order when the customer notifies the bank of the loss of an unindorsed or specially indorsed check. Since such a check cannot be properly payable from the customer's account, it is inappropriate for a bank to require stop-payment order in such a case.

\* \* \*

3. Subsection (c) is added because the automated check collection system cannot accommodate postdated checks. A check is usually paid upon presentment without respect to the date of the check. Under the former law, if a payor bank paid a postdated check before its stated date, it could not charge the customer's account because the check was not "properly payable." Hence, the bank might have been liable for wrongfully dishonoring subsequent checks of the drawer that would have been paid had the postdated check not been prematurely paid. Under subsection (c) a customer wishing to postdate a check must notify the payor bank of its postdating in time to allow the bank to act on the customer's notice before the bank has to commit itself to pay the check. If the bank fails to act on the customer's timely notice, it may be liable for damages for the resulting loss which may include damages for dishonor of subsequent items. This Act does not regulate fees that banks charge their customers for a notice of postdating or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees. *Perdue v. Crocker National Bank*, ~~38 Cal.3d 913~~[702 P.2d 503](#) ([Cal.](#) 1985) (unconscionability); *Best v. United Bank of Oregon*, 739 P.2d 554, 562-566 ([Or.](#) 1987) (good faith and fair dealing). In addition, Section ~~1-203~~[1-304](#) provides that every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

\* \* \*

#### **Cross References:**

Sections ~~3-115 and 1-304~~, [3-407](#), [4-303](#), [4-402](#), [4-403](#).

\* \* \*

#### **Section 4-402. Bank's Liability to Customer for Wrongful Dishonor; Time of Determining Insufficiency of Account**

\* \* \*

#### **Official Comment**

\* \* \*

1. Subsection (a) states positively what has been assumed under the original Article: that if a bank fails to honor a properly payable item it may be liable to its customer for wrongful dishonor. Under subsection (b) the payor bank's wrongful dishonor of an item gives rise to a statutory cause of action. Damages may include consequential damages. Confusion has resulted from the attempts of courts to reconcile the first and second sentences of former Section 4-402. The second sentence implied that the bank was liable for some form of damages other than those proximately caused by the dishonor if the dishonor was other than by mistake. But nothing in the section described what these noncompensatory damages might be. Some courts have held that in distinguishing between mistaken dishonors and nonmistaken dishonors, the so-called "trader" rule has been retained that allowed a "merchant or trader" to recover substantial damages for wrongful dishonor without proof of damages actually suffered. Comment 3 to former Section 4-402 indicated that this was not the intent of the drafters. White & Summers, Uniform Commercial Code, Section 18-4 (1988), states: "The negative implication is that when wrongful dishonors occur not 'through mistake' but willfully, the court may impose damages greater than 'actual damages' ... . Certainly the reference to 'mistake' in the second sentence of 4-402 invites a court to adopt the relevant pre-Code distinction." Subsection (b) by deleting the reference to mistake in the second sentence precludes any inference that Section 4-402 retains the "trader" rule. Whether a bank is liable for noncompensatory damages, such as punitive damages, must be decided by Section 1-103 and Section ~~1-106~~[1-305](#) ("by other rule of law").

\* \* \*

5. Section 4-402 has been construed to preclude an action for wrongful dishonor by a plaintiff other than the bank's customer. *Loucks v. Albuquerque National Bank*, 418 P.2d 191 (~~N.Mex.~~[N.M.](#), 1966). Some courts have allowed a plaintiff other than the customer to sue when the customer is a business entity that is one and the same with the individual or individuals operating it. *Murdaugh Volkswagen, Inc. v. First National Bank*, 801 F.2d 719 (4th Cir. 1986) and *Karsh v. American City Bank*, ~~113 Cal.App.3d 419~~, 169 ~~Cal.Rptr.~~[Cal. Rptr.](#) 851 (~~Ct. App.~~ 1980). However, where the wrongful dishonor impugns the reputation of an operator of the business, the issue is not merely, as the court in *Koger v. East First National Bank*, 443 ~~So.2d~~[So. 2d](#) 141 (~~Fla.App.~~[Fla. Ct. App.](#) 1983), put it, one of a literal versus a liberal interpretation of Section 4-402. Rather the issue is whether the statutory cause of action in Section 4-402 displaces, in accordance with Section 1-103, any cause of action that existed at common law in a person who is not the customer whose reputation was damaged. See *Marcum v. Security Trust and Savings Co.*, ~~221 Ala. 419~~, 129 So.74 ([Ala.](#) 1930). While Section 4-402 should not be interpreted to displace the latter cause of action, the section itself gives no cause of action to other than a "customer," however that definition is construed, and thus confers no cause of action on the holder of a dishonored item. *First American National Bank v. Commerce Union Bank*, 692 S.W.2d 642 (~~Tenn.App.~~[Tenn. Ct. App.](#) 1985).

### [Cross References:](#)

[Sections 1-103, 1-305, 4-103, 4-402.](#)

\* \* \*

### **Section 4-403. Customer's Right to Stop Payment; Burden of Proof of Loss**

\* \* \*

#### **Official Comment**

\* \* \*

7. A payment in violation of an effective direction to stop payment is an improper payment, even though it is made by mistake or inadvertence. Any agreement to the contrary is invalid under Section 4-103(a) if in paying the item over the stop-payment order the bank has failed to exercise ordinary care. An agreement to the contrary which is imposed upon a customer as part of a standard form contract would have to be evaluated in the light of the general obligation of good faith. Sections ~~1-203~~[1-304](#) and 4-104(c). The drawee is, however, entitled to subrogation to prevent unjust enrichment (Section 4-407); retains common law defenses, e.g., that by conduct in recognizing the payment the customer has ratified the bank's action in paying over a stop-payment order (Section 1-103); and retains common law rights, e.g., to recover money paid under a mistake under Section 3-418. It has sometimes been said that payment cannot be stopped against a holder in due course, but the statement is inaccurate. The payment can be stopped but the drawer remains liable on the instrument to the holder in due course (Sections 3-305, 3-414) and the drawee, if it pays, becomes subrogated to the rights of the holder in due course against the drawer. Section 4-407. The relationship between Sections 4-403 and 4-407 is discussed in the comments to Section 4-407. Any defenses available against a holder in due course remain available to the drawer, but other defenses are cut off to the same extent as if the holder were bringing the action.

#### **Cross References:**

~~Point 3: Sections 3-603(1), 4-405.~~

~~Point 4: Section 3-121.~~

~~Point 5: Sections 3-411 and 4-303.~~

~~Point 8: Sections 1-103, 1-304, 3-305, 3-413, 3-411, 3-414, 3-418, 3-602, 4-103, 4-104, 4-106, 4-303, 4-402, 4-403, 4-405, and 4-407.~~

\* \* \*

### **Section 4-404. Bank Not Obligated to Pay Check More Than Six Months Old**

\* \* \*

## Official Comment

\* \* \*

**Cross References:** Sections ~~3-411~~[3-409](#), and ~~3-413~~.

\* \* \*

### **Section 4:-406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration**

\* \* \*

## Official Comment

\* \* \*

#### 1. \* \* \*

Under subsection (a), a statement of account must provide information “sufficient to allow the customer reasonably to identify the items paid.” If the bank supplies its customer with an image of the paid item, it complies with this standard. But a safe harbor rule is provided. The bank complies with the standard of providing “sufficient information” if “the item is described by item number, amount, and date of payment.” This means that the customer’s duties under subsection (c) are triggered if the bank sends a statement of account complying with the safe harbor rule without returning the paid items. A bank does not have to return the paid items unless it has agreed with the customer to do so. Whether there is such an agreement depends upon the particular circumstances. See Section ~~1-201(3)~~[1-201\(b\)\(3\)](#). If the bank elects to provide the minimum information that is “sufficient” under subsection (a) and, as a consequence, the customer could not “reasonably have discovered the unauthorized payment,” there is no preclusion under subsection (d). If the customer made a record of the issued checks on the check stub or carbonized copies furnished by the bank in the checkbook, the customer should usually be able to verify the paid items shown on the statement of account and discover any unauthorized or altered checks. But there could be exceptional circumstances. For example, if a check is altered by changing the name of the payee, the customer could not normally detect the fraud unless the customer is given the paid check or the statement of account discloses the name of the payee of the altered check. If the customer could not “reasonably have discovered the unauthorized payment” under subsection (c) there would not be a preclusion under subsection (d).

\* \* \*

#### 2. \* \* \*

\* \* \*

Subsection (d)(2) changes former subsection (2)(b) by adopting a 30-day period in place of a 14-day period. Although the 14-day period may have been sufficient when the original version of Article 4 was drafted in the 1950s, given the much greater volume of checks at the time of the revision, a longer period was viewed as more appropriate. The rule of subsection (d)(2) follows pre-Code case law that payment of an additional item or items bearing an unauthorized signature or alteration by the same wrongdoer is a loss suffered by the bank traceable to the customer's failure to exercise reasonable care (See Comment 1) in examining the statement and notifying the bank of objections to it. One of the most serious consequences of failure of the customer to comply with the requirements of subsection (c) is the opportunity presented to the wrongdoer to repeat the misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine the statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items. Hence, the rule of subsection (d)(2) is prescribed, and to avoid dispute a specific time limit, 30 days, is designated for cases to which the subsection applies. These considerations are not present if there are no losses resulting from the payment of additional items. In these circumstances, a reasonable period for the customer to comply with its duties under subsection (c) would depend on the circumstances (Section ~~1-204(2)~~[1-205\(a\)](#)) and the subsection (d)(2) time limit should not be imported by analogy into subsection (c).

3. Subsection (b) applies if the items are not returned to the customer. Check retention plans may include a simple payor bank check retention plan or the kind of check retention plan that would be authorized by a truncation agreement in which a collecting bank or the payee may retain the items. Even after agreeing to a check retention plan, a customer may need to see one or more checks for litigation or other purposes. The customer's request for the check may always be made to the payor bank. Under subsection (b) retaining banks may destroy items but must maintain the capacity to furnish legible copies for seven years. A legible copy may include an image of an item. This Act does not define the length of the reasonable period of time for a bank to provide the check or copy of the check. What is reasonable depends on the capacity of the bank and the needs of the customer. This Act does not specify sanctions for failure to retain or furnish the items or legible copies; this is left to other laws regulating banks. See Comment 3 to Section 4-101. Moreover, this Act does not regulate fees that banks charge their customers for furnishing items or copies or other services covered by the Act, but under principles of law such as unconscionability or good faith and fair dealing, courts have reviewed fees and the bank's exercise of a discretion to set fees. *Perdue v. Crocker National Bank*, ~~38 Cal.3d 913~~[702 P.2d 503](#) (Cal. 1985) (unconscionability); *Best v. United Bank of Oregon*, 739 P.2d 554, 562-566 (Or. 1987) (good faith and fair dealing). In addition, Section ~~1-203~~[1-304](#) provides that every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

\* \* \*

### **Cross References:**

Sections ~~3-404, 3-405, 3-406, 3-407, 3-417 and 4-207~~ [1-201, 1-205, 1-304, 3-103, 3-404, 3-405, 3-406, 4-104, 4-111, 4-208, 4-406.](#)

**Definitional Cross References:**

“Alteration”. Section 3-407.  
“Bank”. Section 1-201.  
“Collecting bank”. Section 4-105.  
“Customer”. Section 4-104.  
“Good faith”. Section 1-201.  
“Indorsement”. Section 3-204.  
“Item”. Section 4-104.  
[“Ordinary care”. Section 3-103](#)  
“Payor bank”. Section 4-105.  
“Send”. Section 1-201.  
“Unauthorized signature”. Section 1-201.

**Section 4-407. Payor Bank’s Right to Subrogation on Improper Payment**

\* \* \*

**Official Comment**

\* \* \*

**Cross Reference:** Sections [1-103](#), 4-403.

\* \* \*

**Section 4-501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

[Sections 1-201, 4-104.](#)



~~In Article 4: Sections 4-201, 4-202, 4-203, 4-204 and 4-210.  
In Article 5: Sections 5-110, 5-111, 5-112 and 5-113.~~

\* \* \*

#### **Section 4-502. Presentment of “On Arrival” Drafts**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

~~In Article 4: Sections 4-202 and 4-203.  
In Article 5: Section 5-112.~~

\* \* \*

#### **Section 4-503. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need**

\* \* \*

#### **Official Comment**

\* \* \*

2. If the draft is drawn under a letter of credit, Article 5 controls. See Sections ~~5-109~~[5-108](#) through ~~5-114~~[5-110](#).

#### **Cross References:**

~~Point 1. Section 2-514; see also Section 4-504.  
Point 2. Article 5, especially Sections ~~5-109~~[2-514](#), [4-504](#), [5-108](#) through ~~5-114~~[5-110](#).~~

\* \* \*

#### **Section 4-504. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses**

\* \* \*

## Official Comment

\* \* \*

### Cross References:

Sections ~~4-503 and~~ 2-706.

\* \* \*

## ARTICLE 4A – FUNDS TRANSFERS

### PREFATORY NOTE

\* \* \*

International ~~Transfers~~transfers.

The major international legal document dealing with the subject of electronic funds transfers is the Model Law on International Credit Transfers adopted in 1992 by the United Nations Commission on International Trade Law. It covers basically the same type of transaction as does Article 4A, although it requires the funds transferred to have an international component. The Model Law and Article 4A basically live together in harmony, but to the extent there are differences they must be recognized and, to the extent possible, avoided or adjusted by agreement. See PEB Commentary No. 13.

#### Section 4A-105. Other Definitions

\* \* \*

#### Official Comment

\* \* \*

2. Funds transfer business is frequently transacted by banks outside of general banking hours. Thus, the definition of banking day in Section ~~4-104(1)(e)~~4-104(a)(3) cannot be used to describe when a bank is open for funds transfer business. Subsection (a)(4) defines a new term, “funds transfer business day,” which is applicable to Article 4A. The definition states, “is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.” In some cases it is possible to electronically transmit payment orders and other communications to a receiving bank at any time. If the receiving bank is not open for the processing of an order when it is received, the communication is stored in the receiving bank’s computer for retrieval when the receiving bank is open for processing. The use of the conjunctive makes clear that the defined term is limited to the period during which all functions of the receiving bank can be performed, i.e., receipt, processing, and transmittal of payment orders, cancellations and amendments.

#### Section 4A-203. Unenforceability of Certain Verified Payment Orders

\* \* \*

#### Official Comment

1. Some person will always be identified as the sender of a payment order. Acceptance of the order by the receiving bank is based on a belief by the bank that the order was authorized by the person identified as the sender. If the receiving bank is the beneficiary's bank acceptance means that the receiving bank is obliged to pay the beneficiary. If the receiving bank is not the beneficiary's bank, acceptance means that the receiving bank has executed the sender's order and is obliged to pay the bank that accepted the order issued in execution of the sender's order. In either case the receiving bank may suffer a loss unless it is entitled to enforce payment of the payment order that it accepted. If the person identified as the sender of the order refuses to pay on the ground that the order was not authorized by that person, what are the rights of the receiving bank? In the absence of a statute or agreement that specifically addresses the issue, the question usually will be resolved by the law of agency. In some cases, the law of agency works well. For example, suppose the receiving bank executes a payment order given by means of a letter apparently written by a corporation that is a customer of the bank and apparently signed by an officer of the corporation. If the receiving bank acts solely on the basis of the letter, the corporation is not bound as the sender of the payment order unless the signature was that of the officer and the officer was authorized to act for the corporation in the issuance of payment orders, or some other agency doctrine such as apparent authority or estoppel causes the corporation to be bound. Estoppel can be illustrated by the following example. Suppose P is aware that A, who is unauthorized to act for P, has fraudulently misrepresented to T that A is authorized to act for P. T believes A and is about to rely on the misrepresentation. If P does not notify T of the true facts although P could easily do so, P may be estopped from denying A's lack of authority. A similar result could follow if the failure to notify T is the result of negligence rather than a deliberate decision. ~~Restatement, Second, Agency § 8B~~ [Restatement \(Third\) of Agency § 205](#). Other equitable principles such as subrogation or restitution might also allow a receiving bank to recover with respect to an unauthorized payment order that it accepted. In *Gatoil (U.S.A.), Inc. v. Forest Hill State Bank*, 1 U.C.C. Rep. Serv. 2d 171 (~~D. Md.~~ [D. Md.](#) 1986), a joint venturer not authorized to order payments from the account of the joint venture, ordered a funds transfer from the account. The transfer paid a bona fide debt of the joint venture. Although the transfer was unauthorized the court refused to require recredit of the account because the joint venture suffered no loss. The result can be rationalized on the basis of subrogation of the receiving bank to the right of the beneficiary of the funds transfer to receive the payment from the joint venture.

\* \* \*

#### **Section 4A-207. Misdescription of Beneficiary**

\* \* \*

#### **Official Comment**

\* \* \*

In cases covered by subsection (b) the erroneous identification would in virtually all cases be the identifying or bank account number. In the typical case the error is made by the

originator of the funds transfer. The originator should know the name of the person who is to receive payment and can further identify that person by an address that would normally be known to the originator. It is not unlikely, however, that the originator may not be sure whether the identifying or account number refers to the person the originator intends to pay. Subsection (b)(1) deals with the typical case in which the beneficiary's bank pays on the basis of the account number and is not aware at the time of payment that the named beneficiary is not the holder of the account which was paid. In some cases the false number will be the result of error by the originator. In other cases fraud is involved. For example, Doe is the holder of shares in Mutual Fund. Thief, impersonating Doe, requests redemption of the shares and directs Mutual Fund to wire the redemption proceeds to Doe's account #12345 in Beneficiary's Bank. Mutual Fund originates a funds transfer by issuing a payment order to Originator's Bank to make the payment to Doe's account #12345 in Beneficiary's Bank. Originator's Bank executes the order by issuing a conforming payment order to Beneficiary's Bank which makes payment to account #12345. That account is the account of Roe rather than Doe. Roe might be a person acting in concert with Thief or Roe might be an innocent third party. Assume that Roe is a gem merchant that agreed to sell gems to Thief who agreed to wire the purchase price to Roe's account in Beneficiary's Bank. Roe believed that the credit to Roe's account was a transfer of funds from Thief and released the gems to Thief in good faith in reliance on the payment. The case law is unclear on the responsibility of a beneficiary's bank in carrying out a payment order in which the identification of the beneficiary by name and number is conflicting. See *Securities Fund Services, Inc. v. American National Bank*, 542 F.Supp. 323 (N.D. Ill. 1982) and *Bradford Trust Co. v. Texas American Bank*, 790 F.2d 407 (5th Cir. 1986). Section 4A-207 resolves the issue.

\* \* \*

#### **Section 4A-210. Rejection of Payment Order**

\* \* \*

#### **Official Comment**

\* \* \*

4. Subsection (d) treats acceptance and rejection as mutually exclusive. If a payment order has been accepted, rejection of that order becomes impossible. If a payment order has been rejected it cannot be accepted later by the receiving bank. Once notice of rejection has been given, the sender may have acted on the notice by making the payment through other channels. If the receiving bank wants to act on a payment order that it has rejected it has to obtain the consent of the sender. In that case the consent of the sender would amount to the giving of a second payment order that substitutes for the rejected first order. If the receiving bank suspends payments (Section ~~4-104(1)(k)~~4-104(a)(12)), subsection (c) provides that unaccepted payment orders are deemed rejected at the time suspension of payments occurs. This prevents acceptance by passage of time under Section 4A-209(b)(3).

\*\*\*

### **Section 4A-211. Cancellation and Amendment of Payment Order.**

\*\*\*

#### **Official Comment**

\*\*\*

6. Acceptance by the receiving bank of a payment order issued by the sender is comparable to acceptance of an offer under the law of contracts. Under that law the death or legal incapacity of an offeror terminates the offer even though the offeree has no notice of the death or incapacity. Restatement Second, Contracts § 48. Comment a. to that section states that the “rule seems to be a relic of the obsolete view that a contract requires a ‘meeting of minds,’ and it is out of harmony with the modern doctrine that a manifestation of assent is effective without regard to actual mental assent.” Subsection (g), which reverses the Restatement rule in the case of a payment order, is similar to Section ~~4-405(1)~~[4-405\(a\)](#) which applies to checks. Subsection (g) does not address the effect of the bankruptcy of the sender of a payment order before the order is accepted, but the principle of subsection (g) has been recognized in Bank of Marin v. England, 385 U.S. 99 (1966). Although Bankruptcy Code Section 542(c) may not have been drafted with wire transfers in mind, its language can be read to allow the receiving bank to charge the sender’s account for the amount of the payment order if the receiving bank executed it in ignorance of the bankruptcy.

\*\*\*

### **Section 4A-305. Liability for Late or Improper Execution or Failure to Execute Payment Order**

\*\*\*

#### **Official Comment**

\*\*\*

2. \*\*\*

As the court in *Evra* also noted, the originator of the funds transfer is in the best position to evaluate the risk that a funds transfer will not be made on time and to manage that risk by issuing a payment order in time to allow monitoring of the transaction. The originator, by asking the beneficiary, can quickly determine if the funds transfer has been completed. If the originator has sent the payment order at a time that allows a reasonable margin for correcting error, no loss is likely to result if the transaction is monitored. The other published cases on this issue reach the *Evra* result. *Central Coordinates, Inc. v. Morgan Guaranty Trust Co.*, 40 U.C.C. Rep. Serv. 1340

(~~N.Y. Sup. Ct.~~ [N.Y. Sup. Ct.](#) 1985), and *Gatoil (U.S.A.), Inc. v. Forest Hill State Bank*, 1 U.C.C. Rep. Serv. 2d 171 (~~D.Md.~~ [D. Md.](#) 1986).

\* \* \*

### **Section 4A-507. Choice of Law**

\* \* \*

### **Official Comment**

\* \* \*

3. Subsection (b) deals with choice-of-law agreements and it gives maximum freedom of choice. Since the law of funds transfers is not highly developed in the case law there may be a strong incentive to choose the law of a jurisdiction in which Article 4A is in effect because it provides a greater degree of certainty with respect to the rights of various parties. With respect to commercial transactions, it is often said that “[u]niformity and predictability based upon commercial convenience are the prime considerations in making the choice of governing law . . . .” R. Leflar, *American Conflicts Law*, § 185 (1977). Subsection (b) is derived in part from recently enacted choice-of-law rules in the States of New York and California. N.Y. Gen. Obligations Law [§ 5-1401](#) (McKinney’s 1989 Supp.) and California Civil Code § 1646.5. This broad endorsement of freedom of contract is an enhancement of the approach taken by Restatement (Second) of Conflict of Laws § 187(b) (1971). The Restatement recognizes the basic right of freedom of contract, but the freedom granted the parties may be more limited than the freedom granted here. Under the formulation of the Restatement, if there is no substantial relationship to the jurisdiction whose law is selected and there is no “other” reasonable basis for the parties’ choice, then the selection of the parties need not be honored by a court. Further, if the choice is violative of a fundamental policy of a state which has a materially greater interest than the chosen state, the selection could be disregarded by a court. Those limitations are not found in subsection (b).

\* \* \*

## ARTICLE 5 – LETTERS OF CREDIT

### PREFATORY NOTE

#### Reason for Revision

\* \* \*<sup>0</sup>

\* \* \*

#### Process of Achieving Uniformity

\* \* \*

In part this is accomplished by extensive consultation on and broad circulation of the drafts from 1990, when the project began, until approval of the final draft by the American ~~law~~ [Law](#) Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL).

\* \* \*

#### Advisors

Professor Gerald T. McLaughlin, Loyola Law School, ABA, Section of Business Law  
James G. Barnes, Baker & McKenzie [LLP](#)/U.S. Council on International Banking, Inc.  
Harold S. Burman, U.S. Department of State  
James E. Byrne, George Mason University, Institute of International Banking Law and Practice  
Inc.  
Professor John Dolan, original ABA Advisor  
Henry N. Dyhouse, U.S. Central Credit Union  
David P. Goch, Treasury Management Association  
Thomas J. Greco, American Bankers Association  
Henry Harfield, Shearman & Sterling [LLP](#)  
Oliver I. Ireland, Board of Governors of Federal Reserve Board  
James W. Kopp, Shell Oil Company/Treasury Management Association  
Professor Boris Kozolchyk, University of Arizona/National Law Center for Inter-American Free  
Trade, U.S. Council on International Banking, Inc.  
Vincent M. Maulella, Manufacturers Hanover Trust Co./U.S. Council on International Banking,  
Inc.  
Robert M. Rosenblith, National Westminster Bank  
Bradley K. Sabel, Federal Reserve Bank of New York

---

<sup>0</sup> The Task Force members were: Professor James E. Byrne (George Mason University School of Law) Chair; Professor Boris Kozolchyk (University of Arizona College of Law); Michael Evan Avidon (Moses & Singer [LLP](#)); James G. Barnes (Baker & McKenzie [LLP](#)); Arthur G. Lloyd (Citibank N.A.); Janis S. Penton (Rosen, Wachtell & Gilbert); Richard F. Purcell (Connell, Rice & Sugar Co.); Alan L. Bloodgood (Morgan Guaranty Trust Co.); Charles del Busto (Manufacturers Hanover Trust Co.); Vincent Maulella (Manufacturers Hanover Trust Co.).



Joseph H. Sommer, Federal Reserve Bank of New York  
Jamileh Soufan, American General Corporation/Treasury Management Association  
Dan Taylor, U.S. Council on International Banking, Inc.  
William H. Thornton, Security Pacific National Bank/California Bankers Association  
Paul S. Turner, Occidental Petroleum Corporation/Treasury Management Association  
Stanley M. Walker, Exxon Company U.S.A./Treasury Management Association

### Active Participants

Michael E. Avidon, Moses & Singer [LLP](#)/N.Y. State Bar Association, Banking Law Committee,  
Subcommittee on Letters of Credit  
Walter B. Baker, ABN AMRO Bank, N.V.  
Thomas C. Baxter, Jr., Federal Reserve Bank of New York  
Professor Amelia H. Boss, Pennsylvania Bar Association, Section of Corporation, Banking &  
Business Law, Commercial Law Committee  
Maria A. Chanco, Bank of America, N.T. & S.A.  
Frank P. Curran, Treasury Management Association  
Carol R. Dennis, Office of Federal Procurement Policy, OFMB  
Albert J. Givray, Oklahoma Bar Association, Section of Banking & Commercial Law  
Sidney S. Goldstein, New York State Bar Association  
Professor Egon Guttman, The American University  
George A. Hisert, State Bar of California, Section of Business Law, Committee on UCC,  
Subcommittee on Letters of Credit  
Larry J. Jones, Mobil Oil Credit Corporation  
Carter H. Klein, Jenner & Block [LLP](#)  
Arthur G. Lloyd, ABA, Section of Business Law, Committee on UCC, Subcommittee on Letters  
of Credit, Working Group on UCC Article 5 Revision  
Rebecca S. McCulloch, ABN AMRO Bank, N.V.  
Dennis L. Noah, First National Bank of Maryland/U.S. Council on International Banking, Inc.  
James Purvis, The Bank of California  
James E. Roselle, First National Bank of Chicago  
R. David Whitaker, ABA, Section of Business Law, Committee on UCC, Subcommittee on ECP,  
Working Group on EDC  
Brooke Wunnicke, ABA, Section of Business Law, Committee on UCC, Subcommittee on  
Letters of Credit

\* \* \*

### Benefits of Revised Article 5 to Issuers

**Consequential Damages.** Section 5-111 precludes consequential and punitive damages. It, however, provides strong incentives for Issuers to honor, including provisions for [attorneys attorney's](#) fees and expenses of litigation, interest, and specific performance. If consequential and punitive damages were allowed, the cost of letters of credit could rise substantially.

\* \* \*

**Recognition of UCP.** Section ~~5-116(e)~~[5-116\(e\)](#) expressly recognizes that if the UCP is incorporated by reference into the letter of credit, the agreement varies the provisions of Article 5 with which it may conflict except for the non-variable provisions of Article 5.

\* \* \*

### **Benefits of Revised Article 5 to Beneficiaries**

\* \* \*

**Damages.** The damages provided are expanded and clarified. They include ~~attorneys~~[attorney's](#) fees and expenses of litigation and payment of the full amount of the wrongfully dishonored or repudiated demand, with interest, without an obligation of the beneficiary to mitigate damages (Section 5-111).

\* \* \*

### **Section 5-102. Definitions**

\* \* \*

#### **Official Comment**

1. Since no one can be a confirmer unless that person is a nominated person as defined in Section [5-102\(a\)\(4\)](#) and ~~5-102(a)~~(11), those who agree to “confirm” without the designation or authorization of the issuer are not confirmers under Article 5. Nonetheless, the undertakings to the beneficiary of such persons may be enforceable by the beneficiary as letters of credit issued by the “confirmer” for its own account or as guarantees or contracts outside of Article 5.

\* \* \*

3. \* \* \*

The contract between the applicant and beneficiary is not governed by Article 5, but by applicable contract law, such as Article 2 or the general law of contracts. “Good faith” in that contract is defined by other law, such as Section ~~2-103(1)(b)~~[1-201\(b\)\(20\)](#) or Restatement of Contracts 2d, § 205, which incorporate the principle of “fair dealing” in most cases, or a State’s common law or other statutory provisions that may apply to that contract.

\* \* \*

6. The label on a document is not conclusive; certain documents labelled “guarantees” in accordance with European (and occasionally, American) practice are letters of credit. On the other hand, even documents that are labelled “letter of credit” may not constitute letters of credit under the definition in Section 5-102(a). When a document labelled a letter of credit requires the issuer to pay not upon the presentation of documents, but upon the determination of an extrinsic

fact such as applicant's failure to perform a construction contract, and where that condition appears on its face to be fundamental and would, if ignored, leave no obligation to the issuer under the document labelled letter of credit, the issuer's undertaking is not a letter of credit. It is probably some form of suretyship or other contractual arrangement and may be enforceable as such. See Sections 5-102(a)(10) and 5-103(d). Therefore, undertakings whose fundamental term requires an issuer to look beyond documents and beyond conventional reference to the clock, calendar, and practices concerning the form of various documents are not governed by Article 5. Although [Official Comment 9 to Section 5-108\(g\)](#) recognizes that certain nondocumentary conditions can be included in a letter of credit without denying the undertaking the status of letter of credit, that section does not apply to cases where the nondocumentary condition is fundamental to the issuer's obligation. The rules in Sections 5-102(a)(10), 5-103(d), and 5-108(g) approve the conclusion in *Wichita Eagle & Beacon Publishing Co. v. Pacific Nat'l Bank*, 493 F.2d 1285 (9th Cir. 1974).

\* \* \*

9. Absent a specific agreement to the contrary, documents of a beneficiary delivered to an issuer or nominated person are considered to be presented under the letter of credit to which they refer, and any payment or value given for them is considered to be made under that letter of credit. As the court held in *Alaska Textile Co. v. Chase Manhattan Bank, N.A.*, 982 F.2d 813, 820 (2d Cir. 1992), it takes a "significant showing" to make the presentation of a beneficiary's documents for "collection only" or otherwise outside letter of credit law and practice.

\* \* \*

### **Section 5-103. Scope**

\* \* \*

### **Official Comment**

\* \* \*

2. Like all of the provisions of the Uniform Commercial Code, Article 5 is supplemented by Section 1-103 and, through it, by many rules of statutory and common law. Because this article is quite short and has no rules on many issues that will affect liability with respect to a letter of credit transaction, law beyond Article 5 will often determine rights and liabilities in letter of credit transactions. Even within letter of credit law, the article is far from comprehensive; it deals only with "certain" rights of the parties. Particularly with respect to the standards of performance that are set out in Section 5-108, it is appropriate for the parties and the courts to turn to customs and practice such as the Uniform Customs and Practice for Documentary Credits, currently published by the International Chamber of Commerce as I.C.C. Pub. No. 500 (hereafter UCP). Many letters of credit specifically adopt the UCP as applicable to the particular transaction. Where the UCP are adopted but conflict with Article 5 and except where variation is prohibited, the UCP terms are permissible contractual modifications under

Sections 1-302 and 5-103(c). See Section ~~5-116(e)~~[5-116\(e\)](#). Normally Article 5 should not be considered to conflict with practice except when a rule explicitly stated in the UCP or other practice is different from a rule explicitly stated in Article 5.

\* \* \*

4. Section 5-102(2) and (3) of [original](#) Article 5 are omitted as unneeded; the omission does not change the law.

## **Section 5-105. Consideration**

\* \* \*

### **Official Comment**

It is not to be expected that any issuer will issue its letter of credit without some form of remuneration. But it is not expected that the beneficiary will know what the issuer's remuneration was or whether in fact there was any identifiable remuneration in a given case. And it might be difficult for the beneficiary to prove the issuer's remuneration. This section dispenses with this proof and is consistent with the position of Lord Mansfield in *Pillans v. Van Mierop*, 97 ~~Eng.Rep.~~ [Eng. Rep.](#) 1035 (K.B. 1765) in making consideration irrelevant.

## **Section 5-108. Issuer's Rights and Obligations**

\* \* \*

### **Official Comment**

1. \* \* \*

The section adopts strict compliance, rather than the standard that commentators have called "substantial compliance," the standard arguably applied in *Banco Español de Credito v. State Street Bank and Trust Company Co.*, 385 F.2d 230 (1st Cir. 1967) and *Flagship Cruises Ltd. v. New England Merchants Nat. Nat'l Bank*, 569 F.2d 699 (1st Cir. 1978). Strict compliance does not mean slavish conformity to the terms of the letter of credit. For example, standard practice (what issuers do) may recognize certain presentations as complying that an unschooled layman would regard as discrepant. By adopting standard practice as a way of measuring strict compliance, this article indorses the conclusion of the court in *New Braunfels Nat. Bank v. Odiorne*, 780 S.W.2d 313 (~~Tex.Ct.App.~~ [Tex. Ct. App.](#) 1989) (beneficiary could collect when draft requested payment on "Letter of Credit No. 86-122-5" and letter of credit specified "Letter of Credit No. 86-122-S" holding strict compliance does not demand oppressive perfectionism). The section also indorses the result in *Tosco Corp. v. Federal Deposit Insurance Corp. FDIC*, 723 F.2d 1242 (6th Cir. 1983). The letter of credit in that case called for "drafts Drawn under Bank of Clarksville Letter of Credit Number 105." The draft presented stated "drawn under Bank of Clarksville, Clarksville, Tennessee letter of Credit No. 105." The court correctly found that despite the change of upper case "L" to a lower case "l" and the use of the word "No." instead of

“Number,” and despite the addition of the words “Clarksville, Tennessee,” the presentation conformed. Similarly a document addressed by a foreign person to General Motors as “Jeneral Motors” would strictly conform in the absence of other defects.

Identifying and determining compliance with standard practice are matters of interpretation for the court, not for the jury. As with similar rules in Sections 4A-202(c) and 2-302, it is hoped that there will be more consistency in the outcomes and speedier resolution of disputes if the responsibility for determining the nature and scope of standard practice is granted to the court, not to a jury. Granting the court authority to make these decisions will also encourage the salutary practice of courts’ granting summary judgment in circumstances where there are no significant factual disputes. The statute encourages outcomes such as [that in \*American Coleman Co. v. Intrawest Bank\*, 887 F.2d 1382 \(10th Cir. 1989\)](#), where summary judgment was granted.

\* \* \*

3. \* \* \*

The section thus substitutes a strict preclusion principle for the doctrines of waiver and estoppel that might otherwise apply under Section 1-103. It rejects the reasoning in *Flagship Cruises Ltd. v. New England Merchants’ ~~Nat.~~Nat’l Bank*, 569 F.2d 699 (1st Cir. 1978) and *Wing On Bank Ltd. v. American ~~Nat.~~Nat’l Bank & Trust Co.*, 457 F.2d 328 (5th Cir. 1972) where the issuer was held to be estopped only if the beneficiary relied on the issuer’s failure to give notice.

\* \* \*

7. \* \* \*

Waiver of discrepancies by an issuer or an applicant in one or more presentations does not waive similar discrepancies in a future presentation. Neither the issuer nor the beneficiary can reasonably rely upon honor over past waivers as a basis for concluding that a future defective presentation will justify honor. The reasoning of *Courtaulds of ~~North America~~N. Am. Inc. v. North Carolina ~~Nat.~~Nat’l Bank*, 528 F.2d 802 (4th Cir. 1975) is accepted and that expressed in *Schweibish v. Pontchartrain State Bank*, 389 ~~So.2d~~So. 2d 731 (~~La.App.~~La. Ct. App. 1980) and *Titanium Metals Corp. v. Space Metals, Inc.*, 529 P.2d 431 (Utah 1974) is rejected.

8. The standard practice referred to in subsection (e) includes (i) international practice set forth in or referenced by the Uniform Customs and Practice, (ii) other practice rules published by associations of financial institutions, and (iii) local and regional practice. It is possible that standard practice will vary from one place to another. Where there are conflicting practices, the parties should indicate which practice governs their rights. A practice may be overridden by agreement or course of dealing. See Section ~~1-205(4)~~[1-303\(e\)](#).

9. The responsibility of the issuer under a letter of credit is to examine documents and to make a prompt decision to honor or dishonor based upon that examination. Nondocumentary conditions have no place in this regime and are better accommodated under contract or

suretyship law and practice. In requiring that nondocumentary conditions in letters of credit be ignored as surplusage, Article 5 remains aligned with the UCP (see UCP 500 Article 13c), approves cases like *Pringle-Associated Mortgage Corp. v. Southern National-Nat'l Bank*, 571 F.2d 871, 874 (5th Cir. 1978), and rejects the reasoning in cases such as *Sherwood & Roberts, Inc. v. First Security Bank*, 682 P.2d 149 (Mont. 1984).

\* \* \*

## Section 5-109. Fraud and Forgery

\* \* \*

### Official Comment

1. This recodification makes clear that fraud must be found either in the documents or must have been committed by the beneficiary on the issuer or applicant. See *Cromwell v. Commerce & Energy Bank*, 464 ~~So.2d~~So. 2d 721 (La. 1985).

\* \* \*

Material fraud by the beneficiary occurs only when the beneficiary has no colorable right to expect honor and where there is no basis in fact to support such a right to honor. The section indorses articulations such as those stated in *Intraworld Indus. v. Girard Trust Bank*, 336 A.2d 316 (Pa. 1975), *Roman Ceramics Corp. v. People's Nat-Nat'l Bank*, 714 F.2d 1207 (3d Cir. 1983), and similar decisions and embraces certain decisions under Section 5-114 that relied upon the phrase “fraud in the transaction.” Some of these decisions have been summarized as follows in *Ground Air Transfer v. Westate's Airlines*, 899 F.2d 1269, 1272-73 (1st Cir. 1990):

\* \* \*

4. The standard for injunctive relief is high, and the burden remains on the applicant to show, by evidence and not by mere allegation, that such relief is warranted. Some courts have enjoined payments on letters of credit on insufficient showing by the applicant. For example, in *Griffin Cos. v. First Nat-Nat'l Bank*, 374 N.W.2d 768 (~~Minn.App.~~Minn. Ct. App. 1985), the court enjoined payment under a standby letter of credit, basing its decision on plaintiff's allegation, rather than competent evidence, of fraud.

\* \* \*

5. Although the statute deals principally with injunctions against honor, it also cautions against granting “similar relief” and the same principles apply when the applicant or issuer attempts to achieve the same legal outcome by injunction against presentation (see *Ground Air Transfer Inc. v. Westates Airlines, Inc.*, 899 F.2d 1269 (1st Cir. 1990)), interpleader, declaratory judgment, or attachment. These attempts should face the same obstacles that face efforts to enjoin the issuer from paying. Expanded use of any of these devices could threaten the independence principle just as much as injunctions against honor. For that reason courts should

have the same hostility to them and place the same restrictions on their use as would be applied to injunctions against honor. Courts should not allow the “sacred cow of equity to trample the tender vines of letter of credit law.”

\* \* \*

## Section 5-111. Remedies

\* \* \*

### Official Comment

1. The right to specific performance is new. The express limitation on the duty of the beneficiary to mitigate damages adopts the position of certain courts and commentators. Because the letter of credit depends upon speed and certainty of payment, it is important that the issuer not be given an incentive to dishonor. The issuer might have an incentive to dishonor if it could rely on the burden of mitigation falling on the beneficiary; (e.g., to sell goods and sue only for the difference between the price of the goods sold and the amount due under the letter of credit). Under the scheme contemplated by Section 5-111(a), the beneficiary would present the documents to the issuer. If the issuer wrongfully dishonored, the beneficiary would have no further duty to the issuer with respect to the goods covered by documents that the issuer dishonored and returned. The issuer thus takes the risk that the beneficiary will let the goods rot or be destroyed. Of course the beneficiary may have a duty of mitigation to the applicant arising from the underlying agreement, but the issuer would not have the right to assert that duty by way of defense or setoff. See Section 5-117(d). If the beneficiary sells the goods covered by dishonored documents or if the beneficiary sells a draft after acceptance but before dishonor by the issuer, the net amount so gained should be subtracted from the amount of the beneficiary's damages – at least where the damage claim against the issuer equals or exceeds the damage suffered by the beneficiary. If, on the other hand, the beneficiary suffers damages in an underlying transaction in an amount that exceeds the amount of the wrongfully dishonored demand (e.g., where the letter of credit does not cover 100 percent of the underlying obligation), the damages avoided should not necessarily be deducted from the beneficiary's claim against the issuer. In such a case, the damages would be the lesser of (i) the amount recoverable in the absence of mitigation (that is, the amount that is subject to the dishonor or repudiation plus any incidental damages) and (ii) the damages remaining after deduction for the amount of damages actually avoided.

A beneficiary need not present documents as a condition of suit for anticipatory repudiation, but if a beneficiary could never have obtained documents necessary for a presentation conforming to the letter of credit, the beneficiary cannot recover for anticipatory repudiation of the letter of credit. *Doelger v. Battery Park Bank*, ~~201 A.D. 515~~, 194 N.Y.S. 582 ([Sup. Ct. App. Div.](#) 1922) and *Decor by Nikkei Int'l, Inc. v. Federal Republic of Nigeria*, 497 ~~F.Supp.~~[F. Supp.](#) 893 (S.D.N.Y. 1980), *aff'd*, 647 F.2d 300 (2d Cir. 1981), *cert. denied*, 454 U.S. 1148 (1982). The last sentence of subsection (c) does not expand the liability of a confirmer to persons to whom the confirmer would not otherwise be liable under Section 5-107.



\* \* \*

### **Section 5-113. Transfer by Operation of Law**

\* \* \*

#### **Official Comment**

This section affirms the result in *Pastor v. Nat. Nat'l Republic Bank of Chicago*, 76 Ill.2d 139, 390 N.E.2d 894 (Ill. 1979) and *Federal Deposit Insurance Co. v. Bank of Boulder*, 911 F.2d 1466 (10th Cir. 1990). Both electronic and tangible documents may be signed.

\* \* \*

### **Section 5-117. Subrogation of Issuer, Applicant, and Nominated Person.**

\* \* \*

#### **Official Comment**

1. By itself this section does not grant any right of subrogation. It grants only the right that would exist if the person seeking subrogation “were a secondary obligor.” (The term “secondary obligor” refers to a surety, guarantor, or other person against whom or whose property an obligee has recourse with respect to the obligation of a third party. See Restatement of the Law Third, Suretyship § 1 (1995).) If the secondary obligor would not have a right to subrogation in the circumstances in which one is claimed under this section, none is granted by this section. In effect, the section does no more than to remove an impediment that some courts have found to subrogation because they conclude that the issuer’s or other claimant’s rights are “independent” of the underlying obligation. If, for example, a secondary obligor would not have a subrogation right because its payment did not fully satisfy the underlying obligation, none would be available under this section. The section indorses the position of Judge Becker in *Tudor Development Dev. Group, Inc. v. United States Fidelity and Guaranty*, 968 F.2d 357 (3rd Cir. 1991).

\* \* \*

### **Section 5-118. Security Interest of Issuer or Nominated Person**

\* \* \*

#### **Official Comment**

\* \* \*

2. \* \* \*



Under subsection (b)(3), if the document (i) is in a written or tangible medium, (ii) is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, and (iii) is not in the debtor's possession, the security interest is perfected and has priority over a conflicting security interest. If the document is a type of tangible collateral that subsection (b)(3) excludes from its perfection and priority rules, ~~the issuer or nominated person must comply with the normal method of perfection (e.g., possession of an instrument) and is~~ a security interest in the document arising under subsection (a) would be automatically perfected pursuant to Section 9-309(8) but subject to the applicable Article 9 priority rules. Documents to which subsection (b)(3) applies may be important to an issuer or nominated person. For example, a confirmer who pays the beneficiary must be assured that its rights to all documents are not impaired. It will find it necessary to present all of the required documents to the issuer in order to be reimbursed. Moreover, when a nominated person sends documents to an issuer in connection with the nominated person's reimbursement, that activity is not a collection, enforcement, or disposition of collateral under Article 9.

## ARTICLE 6 – BULK SALES

### Alternative B

#### Section 6-102. Definitions and Index of Definitions

\* \* \*

#### Official Comment

\* \* \*

(o) “Value”. New. The definition in Section ~~1-201(44)~~1-204 is not appropriate in the context of this Article.

\* \* \*

#### Section 6-103. Applicability of Article

\* \* \*

#### Official Comment

\* \* \*

2. The choice-of-law rule in subsections (1)(b) and (2) derives from former Section 9-103(3) (now codified as Sections 9-301 and 9-307). Any agreement between the buyer and the seller with regard to the law governing a bulk sale does not affect the choice-of-law rule in this Article.

\* \* \*

6. \* \* \*

Subsection (3)(j) derives from subsection (6) of Section 6-103 (1987 Official Text) and is available to buyers who are not insolvent (as defined in Section ~~1-201(23)~~1-201(b)(23)), assume all the seller’s business debts in full, and give notice of the assumption. Subsection (3)(k) derives from subsection (7) of Section 6-103 (1987 Official Text) and excludes transactions in which the risks to creditors are minimal. Like subsection (3)(j), this subsection applies only if the buyer assumes all the seller’s business debts in full and gives notice of the assumption. In addition, the buyer must be a new organization that is organized to take over and continue the seller’s business, the seller must receive nothing from the sale other than an interest in the new organization, and the seller’s interest must be subordinate to the claims arising from the assumption. Sales that may qualify for the exclusion include the incorporation of a partnership or sole proprietorship.

\* \* \*

### **Cross-References:**

Point 1: Sections 9-102(a)(23), (33), (34), (44), (48).  
Point 2: Sections ~~1-105~~1-301, 9-301, and 9-307.  
Point 3: Section 6-102.  
Point 4: Sections 9-609, 9-610, and 9-620.  
Point 6: Sections 1-201 and ~~1-203~~1-304.  
Point 7: Section 6-102.

### **Definitional Cross-References:**

“Asset”. Section 6-102.  
“Auctioneer”. Section 6-102.  
“Bulk sale”. Section 6-102.  
“Buyer”. Section 2-103.  
“Claimant”. Section 6-102.  
“Collateral”. Section 9-102(a)(12).  
“Date of the bulk sale”. Section 6-102.  
“Date of the bulk-sale agreement”. Section 6-102.  
“Debt”. Section 6-102.  
“Insolvent”. Section 1-201.  
“Inventory”. Section 9-102(a)(48).  
“Knowledge”. Section ~~1-201~~1-202.  
“Liquidator”. Section 6-102.  
“Net contract price”. Section 6-102.  
“Notice”. Section ~~1-201~~1-202.  
“Organization”. Section 1-201.  
“Presumed”. Section ~~1-201~~1-206.  
“Proceeds”. Section 9-102(a)(64).  
“Sale”. Section 2-106.  
“Secured party”. Section 9-102(a)(72).  
“Security interest”. Section 1-201.  
“Seller”. Section 2-103.  
“Send”. Section 1-201.  
“United States”. Section 6-102.  
“Value”. Section 6-102.  
“Verified”. Section 6-102.

### **Section 6-104. Obligations of Buyer**

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross-References:

“Buyer”. Section 2-103.  
“Bulk sale”. Section 6-102.  
“Claimant”. Section 6-102.  
“Date of the bulk sale”. Section 6-102.  
“Net contract price”. Section 6-102.  
“Notice”. Section ~~1-201~~[1-202](#).  
“Seller”. Section 2-103.  
“Verified”. Section 6-102.

### Section 6-105. Notice to Claimants

\* \* \*

## Official Comment

\* \* \*

### Cross-References:

Point 1: Sections 1-201 and 6-104.  
Point 2: Sections ~~1-203~~[1-304](#) and 6-104.  
Point 3: Sections 6-102, 6-104, 9-108, 9-502 and 9-504.  
Point 4: Sections 6-104 and 9-503.  
Point 5: Section 6-102.  
Point 6: Sections 6-107 and 9-506.

### Definitional Cross-References:

“Asset”. Section 6-102.  
“Bulk sale”. Section 6-102.  
“Buyer”. Section 2-103.  
“Claim”. Section 6-102.  
“Claimant”. Section 6-102.  
“Date of the bulk sale”. Section 6-102.  
“Date of the bulk-sale agreement”. Section 6-102.  
“Debt”. Section 6-102.  
“Knowledge”. Section ~~1-201~~[1-202](#).  
“Net contract price”. Section 6-102.

“Seller”. Section 2-103.  
“Send”. Section 1-201.  
“Verified”. Section 6-102.  
“Written”. Section 1-201.

## **Section 6-106. Schedule of Distribution**

\* \* \*

### **Official Comment**

\* \* \*

#### **Cross-References:**

Point 1: Sections 6-104 and 6-105.  
Point 2: Section 6-105.  
Point 3: Sections ~~1-102~~[1-302](#) and 6-107.

\* \* \*

## **Section 6-107. Liability for Noncompliance**

\* \* \*

### **Official Comment**

\* \* \*

#### **Cross-References:**

Point 1: Section 6-104.  
Point 4: Section 4-103.  
Point 5: Sections 6-104 and 6-105.  
Point 6: Sections 1-201, 6-102, 6-103, and 6-104.  
Point 7: Sections ~~1-102, 1-201~~[1-304](#), 6-102 and 6-103.  
Point 8: Section 6-102.  
Point 9: Section ~~1-203~~[1-304](#).  
Point 10: Section ~~1-102~~[1-302](#).  
Point 11: Sections 6-102 and 6-110.  
Point 12: Section 6-106.

\* \* \*

**Section 6-109. What Constitutes Filing; Duties of Filing Officer; Information from Filing Officer**

\* \* \*

**Official Comment**

\* \* \*

**Cross-References:**

Sections 6-103, 6-105, ~~9-403, and 9-407~~[9-515, 9-516, 9-519, 9-522, 9-523, and 9-525.](#)

\* \* \*

## ARTICLE 7 – DOCUMENTS OF TITLE

### *PREFATORY NOTE*

\* \* \*

To provide for electronic documents of title, several definitions in Article 1 were revised including “bearer,” “bill of lading,” “delivery,” “document of title,” “holder,” and “warehouse receipt.” The concept of an electronic document of title allows for commercial practice to determine whether records issued by bailees are “in the regular course of business or financing” and are “treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers.”

~~Rev.~~ Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC.

~~Conforming amendments to other Articles of the UCC are contained in Appendix I.~~

\* \* \*

### **Section 7-102. Definitions And Index Of Definitions**

\* \* \*

#### **Official Comment**

\* \* \*

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of “document of title” in Section 1-201(b)(16).

\* \* \*

#### **Cross References:**

Point 1: Sections 1-201, 7-203, ~~and~~ 7-301.

Point 2: Sections 1-201, ~~and~~ 7-203.

Point 3: Section 1-201.

Point 4: Section 1-304.

Point 5: Section 9-102, ~~and~~ 2-103.

See general comment to document of title in Section 1-201.

\* \* \*

### **Section 7-103. Relation of Article to Treaty or Statute**

\* \* \*

#### **Official Comment**

\* \* \*

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article and the conforming amendments to other articles of the Uniform Commercial Code promulgated as part of the revision of this article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to ~~Revised Article 1~~, Section 1-108.

\* \* \*

### **Section 7-104. Negotiable and Nonnegotiable Document of Title**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Sections 7-501, ~~and~~ 7-502.

\* \* \*

### **Section 7-105. Reissuance in Alternative Medium**

\* \* \*

#### **Official Comment**

\* \* \*

**Other relevant law:** ~~UNCITRAL Draft Instrument on the Carriage of Goods by Sea Transport Law~~ [United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea \(New York, 2008\)](#).



\* \* \*

**Cross References:**

Sections 7-106, 7-402, ~~and~~ 7-601.

**Definitional Cross Reference:**

“Person entitled to enforce”<sup>5</sup>; Section 7-102.

**Section 7-106. Control of Electronic Document of Title**

\* \* \*

**Official Comment**

\* \* \*

This section defines “control” for electronic documents of title. Subsections (a) and (b) derive from the Uniform Electronic Transactions Act Section 16 on ~~transferrable~~ transferable records. Unlike under UETA Section 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA Section 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

\* \* \*

**Cross References:**

Sections 7-105, ~~and~~ 7-501.

**Definitional Cross-References:**

“Delivery”<sup>5</sup>; 1-201.

“Document of title”<sup>5</sup>; 1-201.

**Section 7-202. Form of Warehouse Receipt; Effect of Omission**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 7-103, ~~and~~ 7-401.

\* \* \*

**Section 7-204. Duty of Care; Contractual Limitation of Warehouse's Liability**

\* \* \*

**Official Comment**

\* \* \*

4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. See *Adams v. Ryan & Christie Storage, Inc.*, 563 F. Supp. 409 (E.D. Pa. 1983) *aff'd*, 725 F.2d 666 (3rd Cir. 1983). Cases such as *I.C.C. Metals Inc. v. Municipal Warehouse Co.*, 409 ~~N.E. 2d~~[N.E.2d](#) 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a presumption of conversion to the warehouse's own use are disapproved. "Conversion to its own use" is narrower than the idea of conversion generally. Cases such as *Lipman v. Peterson*, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

\* \* \*

**Cross References:**

Sections 1-302, 7-103, 7-309, ~~and~~ 7-403.

**Definitional Cross References:**

"Goods". Section 7-102.

"Reasonable time". Section ~~1-204~~[1-205](#).

"Sign". Section 7-102.

"Term". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

**Section 7-205. Title under Warehouse Receipt Defeated in Certain Cases**

\* \* \*

**Official Comment**

\* \* \*

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in 7-501. The definition of “buyer in ordinary course” is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. ~~See amended Section 2-103.~~ This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

**Cross References:**

Sections 2-403, ~~and~~ 9-320.

**Definitional Cross References:**

“Buyer in ordinary course of business”. Section 1-201.

“Delivery”. Section 1-201.

“Duly negotiate”. Section 7-501.

“Fungible~~2~~ goods”. Section 1-201.

“Goods”. Section 7-102.

“Value”. Section 1-204.

“Warehouse receipt”. Section 1-201.

“Warehouse”. Section 7-102.

**Section 7-206. Termination of Storage at Warehouse’s Option**

\* \* \*

**Official Comment**

\* \* \*

1. This section provides for three situations in which the warehouse may terminate storage for reasons other ~~than~~ than enforcement of its lien as permitted by Section 7-210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse’s power to terminate the bailment, since it would be commercially intolerable to allow warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of “any charges”, but does not depend on the existence of unpaid charges.

\* \* \*

**Cross References:**

Sections 7-103, ~~and~~ 7-403.

**Section 7-209. Lien of Warehouse**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 1: Sections 7-501, ~~and~~ 7-502.

Point 2: Sections 9-109, ~~and~~ 9-333.

Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312, ~~and~~ 9-322 .

Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, 9-401.

Point 5: Sections 2-503, ~~and~~ 7-403.

Point 6: Sections 7-202, ~~and~~ 7-204.

**Section 7-210. Enforcement of Warehouse’s Lien**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 2-706, 7-403, 7-603, ~~and~~ Part 6 of Article 9.

\* \* \*

**Section 7-301. Liability for Nonreceipt or Misdescription; “Said to Contain”;  
“Shipper’s Weight, Load, and Count”; Improper Handling**

\* \* \*

**Official Comment**

\* \* \*

2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. *D. H. Overmyer Co. v. Nelson Brantley Glass Co.*, 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre-Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser. There is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 ~~F.Supp.~~F. Supp. 595 (~~D.N.J.1951~~D.N.J. 1951), are disapproved.

\* \* \*

**Cross References:**

Sections 7-203, 7-309, ~~and~~ 7-501.

\* \* \*

**Section 7-302. Through Bills of Lading and Similar Documents of Title**

\* \* \*

**Official Comment**

\* \* \*

**Cross ~~reference~~Reference:**

Section 7-103.

**Definitional Cross References:**

“Agreement”. Section 1-201.

“Bailee”. Section 7-102.

“Bill of lading”. Section 1-201.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Goods”. Section 7-102.

“Issuer”. Section 7-102.

“Party”. Section 1-201.

“Person”. Section 1-201.

**Section 7-303. Diversion; Reconsignment; Change of Instructions**

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 1: Sections 2-705, ~~and~~ 7-103.

Point 2: Article 2, Sections 7-403, ~~and~~ 7-504(3).

\* \* \*

### Section 7-304. Tangible Bills of Lading in a Set

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Section 7-103, 7-303, ~~and~~ 7-106.

\* \* \*

### Section 7-306. Altered Bills Of Lading

### Official Comment

\* \* \*

#### Cross References:

Sections 7-106, ~~and~~ 7-208.

### Section 7-307. Lien of Carrier

\* \* \*

### Official Comment

\* \* \*

1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of Section 7-209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision in *In re Sharon Steel Corp.*, ~~25 U.C.C. Rep.2d 503~~, 176 B.R. 384 (Bankr. W.D. Pa. 1995), is correct and is the controlling precedent.

\* \* \*

#### **Cross References:**

Point 1: Sections 7-209, 9-109, ~~and~~ 9-333.

Point 3. Section 7-202, ~~and~~ 7-209.

\* \* \*

### **Section 7-309. Duty of Care; Contractual Limitation of Carrier's Liability**

\* \* \*

#### **Official Comment**

\* \* \*

3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. *Art Masters Associates, Ltd. v. United Parcel Service*, ~~77 N.Y.2d 200~~, 567 N.E.2d 226 (N.Y. 1990); See, *Kemper Ins. Co. v. Fed. Ex. Corp.*, 252 F.3d 509 (1st Cir), *cert. denied*, 534 U.S. 1020 (2001) (opinion interpreting federal law).

\* \* \*

**Cross References:**

Sections 1-302, 7-103, 7-204, 7-403.

\* \* \*

**Section 7-401. Irregularities in Issue of Receipt or Bill or Conduct Of Issuer**

\* \* \*

**Official Comment**

\* \* \*

The bailee’s liability on its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (Section 7-403) or its obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid “document” was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. *Tate v. Action Moving & Storage, Inc.*, 383 S.E.2d 229 (N.C. Ct. App. 1989), *rev. denied* 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See Section 7-103.

\* \* \*

**Section 7-402. Duplicate Document of Title; Overissue**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 1: Sections 7-105, 7-207, 7-304, ~~and~~ 7-601.

Point 3: Section 7-503.

\* \* \*



**Section 7-403. Obligation of Bailee to Deliver; Excuse**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 2: Sections 7-502, ~~and~~ 7-503.

Point 3: Sections 2-705, 2A-526, 7-103, 7-204, ~~and~~ 7-309 ~~and~~ 10-103.

Point 4: Sections 7-209, 7-307, ~~and~~ 7-603.

Point 5: Section 7-503(1).

Point 6: Sections 7-601, 7-602, ~~and~~ 7-603.

\* \* \*

**Section 7-501. Form of Negotiation and Requirements of Due Negotiation**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 1-307, 7-502, ~~and~~ 7-503.

\* \* \*

**Section 7-502. Rights Acquired by Due Negotiation**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 7-103, 7-205, 7-403, 7-501, ~~and~~ 7-503.

\* \* \*

## Section 7-503. Document of Title to Goods Defeated in Certain Cases

\* \* \*

### Official Comment

\* \* \*

1. \* \* \*

This comment ~~1~~ should be considered in interpreting delivery, entrustment or acquiescence in application of Section 7-209(c).

\* \* \*

#### Cross References:

Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320, 9-321(c), ~~and~~ 9-331.

Point 2: Sections 7-402, ~~and~~ 7-504.

Point 3: Sections 7-402, 7-403, ~~and~~ 7-404.

## Section 7-504. Rights Acquired in Absence of Due Negotiation; Effect of Diversion; Stoppage of Delivery

\* \* \*

### Official Comment

\* \* \*

#### Cross References:

Point 1: Sections 2-403, ~~and~~ 7-506.

Point 2: Sections 2-403, ~~and~~ 2A-304.

Point 3: Sections 7-303, 7-403(a)(5), ~~and~~ 7-404.

Point 4: Sections 2-705, ~~and~~ 7-403(a)(4).

Point 5: Section 1-202.

#### Definitional Cross References:

“Bailee”. Section 7-102.

“Bill of lading”. Section 1-201.

“Buyer in ordinary course of business”. Section 1-201.

“Consignee”. Section 7-102.

“Consignor”. Section 7-102.

“Creditor”. Section 1-201.  
“Delivery”. Section 1-201.  
“Document of Title”. Section 1-201.  
“Duly negotiate”. Section 7-501.  
“Good faith”. Section 1-201. [7-102].  
“Goods”. Section 7-102.  
~~“Honor”. Section 1-201.~~  
“Lessee in ordinary course”. Section 2A-103.  
“Notification” Section 1-202.  
“Purchaser”. Section 1-201.  
“Rights”. Section 1-201.

### **Section 7-505. Indorser Not Guarantor for Other Parties**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Sections 7-106, ~~and~~ 7-502.

### **Section 7-506. Delivery without Indorsement: Right to Compel Indorsement**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Cross References:**

Point 1: Sections 7-106, ~~and~~ 7-505.

Point 2: Sections 7-501(a)(5), ~~and~~ 7-403(c).

### **Section 7-507. Warranties on Negotiation or Delivery of Document of Title**

\* \* \*

#### **Official Comment**

\* \* \*

**Cross References:**

Point 1: Sections 2-312 through 2-318, ~~and~~ 2A-310-through 2A-316.

Point 2: Section 7-508.

\* \* \*

**Section 7-508. Warranties of Collecting Bank as to Documents of Title**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Sections 4-104, 4-203, 4-501 through 4-504, 5-102, ~~and~~ 7-507.

\* \* \*

**Section 7-601. Lost, Stolen, or Destroyed Documents of Title**

\* \* \*

**Official Comment**

\* \* \*

**Cross References:**

Point 1: Sections 3-309, 7-402, ~~and~~ 7-603.

Point 2: Section 7-105.

Point 3: Section 7-403.

Point 4: Section 7-403.

Point 5: Sections 7-209, ~~and~~ 7-307.

**Section 7-602. Judicial Process against Goods Covered by Negotiable Document of Title**

\* \* \*

**Official Comment**

\* \* \*

**Cross Reference:**

Sections 7-106, ~~and~~ 7-501 through 7-503.

**Section 7-603. Conflicting Claims; Interpleader**

\* \* \*

**Official Comment**

\* \* \*

1. The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. See e.g. *Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc.*, ~~162 Ga. App. 741,~~ 293 S.E.2d. 30 ([Ga. Ct. App.](#) 1982).

\* \* \*

## ARTICLE 8 – INVESTMENT SECURITIES

### PREFATORY NOTE

\* \* \*

### III. SCOPE AND APPLICATION OF ARTICLE 8

\* \* \*

#### C. Application of Revised Articles 8 and 9 to Common Investments and Investment Arrangements

\* \* \*

##### 9. \* \* \*

Some forms of short term money market instruments may meet the requirements of an Article 8 security, while others may not. For example, the Article 8 definition of security requires that the obligation be in registered or bearer form. Bankers' acceptances are typically payable "to order," and thus do not qualify as Article 8 securities. Thus, the obligations of the immediate parties to a ~~bankers'~~banker's acceptance are governed by Article 3, rather than Article 8. That is an entirely appropriate classification, even for those bankers' ~~acceptance~~acceptances that are handled as investment media in the securities markets, because Article 8, unlike Article 3, does not contain rules specifying the standardized obligations of parties to instruments. For example, the Article 3 rules on the obligations of acceptors and drawers of drafts are necessary to specify the obligations represented by bankers' acceptances, but Article 8 contains no provisions dealing with these issues.

Immobilization through a depository system is, however, just as important for money market instruments as for traditional securities. Under the prior version of Article 8, the rules on the depository system, set out in Section 8-320, applied only to Article 8 securities. Although some forms of money market instruments could be fitted within the language of the Article 8 definition of "security," this is not true for bankers' acceptances. Accordingly, it was not thought feasible to make bankers' acceptances eligible for deposit in clearing corporations under the prior version of Article 8. Revised Article 8 solves this problem by separating the coverage of the Part 5 rules from the definition of security. Even though a ~~bankers'~~banker's acceptance or other money market instrument is an Article 3 negotiable instrument rather than an Article 8 security, it would still fall within the definition of financial asset in Section 8-102(a)(9). Accordingly, if the instrument is held through a clearing corporation or other securities intermediary, the rules of Part 5 of Article 8 apply.

\* \* \*

##### 14. \* \* \*

A common mechanism by which new financial instruments are devised is that a financial institution that holds some security, financial instrument, or pool thereof, creates interests in that asset or pool which are sold to others. It is not possible to answer in the abstract the question of how such interests are treated under Article 8, because the variety of such products is limited only by human imagination and current regulatory structures. At this general level, however, one can note that there are at least three possible treatments under Article 8 of the relationship between the institution, which creates the interests, and the persons who hold them. (Again, it must be borne in mind that the Article 8 classification issue may be different from the classification question posed by federal securities law or other regulation.) First, creation of the new interests in the underlying assets may constitute issuance of a new Article 8 security. In that case the relationship between the institution, ~~that~~ which created the interest, and the persons who hold them is not governed by the Part 5 rules, but by the rules of Parts 2, 3, and 4. See Section 8-501(e). That, for example, is the structure of issuance of mutual fund shares. Second, the relationship between the entity creating the interests and those holding them may fit within the Part 5 rules, so that the persons are treating as having security entitlements against the institution with respect to the underlying assets. That, for example, is the structure used for stock options. Third, it may be that the creation of the new interests in the underlying assets does not constitute issuance of a new Article 8 security, nor does the relationship between the entity creating the interests and those holding them fit within the Part 5 rules. In that case, the relationship is governed by other law, as in the case of ordinary trusts.

\* \* \*

### **Section 8-102. Definitions**

\* \* \*

#### **Official Comment**

1. \* \* \*

The definition of adverse claim in the prior version of Article 8 might have been read to suggest that any wrongful action concerning a security, even a simple breach of contract, gave rise to an adverse claim. Insofar as such cases as *Fallon v. Wall Street Clearing Corp.*, 586 N.Y.S.2d 953, ~~182 A.D.2d 245~~, (Sup. Ct. App. Div. 1992) and *Pentech Intl. v. Wall St. Clearing Co.*, 983 F.2d 441 (2d Cir. 1993), were based on that view, they are rejected by the new definition which explicitly limits the term adverse claim to property interests. Suppose, for example, that A contracts to sell or deliver securities to B, but fails to do so and instead sells or pledges the securities to C. B, the promisee, has an action against A for breach of contract, but absent unusual circumstances the action for breach would not give rise to a property interest in the securities. Accordingly, B does not have an adverse claim. An adverse claim might, however, be based upon principles of equitable remedies that give rise to property claims. It would, for example, cover a right established by other law to rescind a transaction in which securities were transferred. Suppose, for example, that A holds securities and is induced by B's fraud to transfer them to B. Under the law of contract or restitution, A may have a right to rescind the transfer,

which gives A a property claim to the securities. If so, A has an adverse claim to the securities in B's hands. By contrast, if B had committed no fraud, but had merely committed a breach of contract in connection with the transfer from A to B, A may have only a right to damages for breach, not a right to rescind. In that case, A would not have an adverse claim to the securities in B's hands.

\* \* \*

10. Good faith. Section ~~1-203~~1-304 provides that "Every contract or duty within [the Uniform Commercial Code] imposes an obligation of good faith in its performance ~~or~~and enforcement." Section 1-102(b)(20) defines "good faith" as "honesty in fact and the observance of reasonable commercial standards of fair dealing." The reference to commercial standards makes clear that assessments of conduct are to be made in light of the commercial setting. The substantive rules of Article 8 have been drafted to take account of the commercial circumstances of the securities holding and processing system. For example, Section 8-115 provides that a securities intermediary acting on an effective entitlement order, or a broker or other agent acting as a conduit in a securities transaction, is not liable to an adverse claimant, unless the claimant obtained legal process or the intermediary acted in collusion with the wrongdoer. This, and other similar provisions, see Sections 8-404 and 8-503(e), do not depend on notice of adverse claims, because it would impair rather than advance the interest of investors in having a sound and efficient securities clearance and settlement system to require intermediaries to investigate the propriety of the transactions they are processing. The good faith obligation does not supplant the standards of conduct established in provisions of this kind.

\* \* \*

**Definitional Cross References:**

"Agreement"	Section 1-201(b)(3)
"Bank"	Section 1-201(b)(4)
"Person"	Section 1-201(b)(27)
"Send"	Section 1-201(b)(36)
"Signed"	Section 1-201(b)(37)
"Writing"	Section 1-201(b)(43)

**Section 8-103. Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**



“Clearing corporation”	Section 8-102(a)(5)
“Commodity contract”	Section 9-102(a)(15)
“Financial asset”	Section 8-102(a)(9)
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)

## Section 8-104. Acquisition of Security or Financial Asset or Interest Therein

\* \* \*

### Official Comment

1. \* \* \*

Subsection (b) specifies how a person may acquire an interest under Article 8 in a financial asset other than a security. This Article deals with financial assets other than securities only insofar as they are held in the indirect holding system. For example, a ~~bankers’~~banker’s acceptance falls within the definition of “financial asset,” so if it is held through a securities account the entitlement holder’s right to it is a security entitlement governed by Part 5. The ~~bankers’~~banker’s acceptance itself, however, is a negotiable instrument governed by Article 3, not by Article 8. Thus, the provisions of Parts 2, 3, and 4 of this Article that deal with the rights of direct holders of securities are not applicable. Article 3, not Article 8, specifies how one acquires a direct interest in a ~~bankers’~~banker’s acceptance. If a ~~bankers’~~banker’s acceptance is delivered to a clearing corporation to be held for the account of the clearing corporation’s participants, the clearing corporation becomes the holder of the ~~bankers’~~banker’s acceptance under the Article 3 rules specifying how negotiable instruments are transferred. The rights of the clearing corporation’s participants, however, are governed by Part 5 of this Article.

\* \* \*

### Definitional Cross References:

“Delivery”	Section 8-301
“Financial asset”	Section 8-102(a)(9)
“Person”	Section <del>1-201(30)</del> <u>1-201(b)(27)</u>
“Purchaser”	Sections <del>1-201(33)</del> <u>1-201(b)(30)</u> & 8-116
“Security”	Section 8-102(a)(15)
“Security entitlement”	Section 8-102(a)(17)

## Section 8-105. Notice of Adverse Claim

\* \* \*

### Official Comment

\* \* \*

4. Paragraph (a)(2) provides that a person has notice of an adverse claim if the person is aware of a significant probability that an adverse claim exists and deliberately avoids information that might establish the existence of the adverse claim. This is intended to codify the “willful blindness” test that has been applied in such cases. See *May v. Chapman*, ~~16 M. & W. 355~~, 153 Eng. Rep. 1225 (1847); *Goodman v. Simonds*, 61 U.S. 343 (1857).

\* \* \*

6. Subsection (b) provides explicitly for some situations involving purchase from one described or identifiable as a representative. Knowledge of the existence of the representative relation is not enough in itself to constitute “notice of an adverse claim” that would disqualify the purchaser from protected purchaser status. A purchaser may take a security on the inference that the representative is acting properly. Knowledge that a security is being transferred to an individual account of the representative or that the proceeds of the transaction will be paid into that account is not sufficient to constitute “notice of an adverse claim,” but knowledge that the proceeds will be applied to the personal indebtedness of the representative is. See *State Bank of Binghamton v. Bache*, ~~162 Misc. 128~~, 293 N.Y.S. 667 ([Sup. Ct.](#) 1937).

\* \* \*

#### **Definitional Cross References:**

“Adverse claim”	Section 8-102(a)(1)
“Bearer form”	Section 8-102(a)(2)
“Certificated security”	Section 8-102(a)(4)
“Financial asset”	Section 8-102(a)(9)
“Knowledge”	Section <del>1-201(25)</del> <a href="#">1-202(b)</a>
“Person”	Section <del>1-201(30)</del> <a href="#">1-201(b)(27)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Registered form”	Section 8-102(a)(13)
“Representative”	Section <del>1-201(35)</del> <a href="#">1-201(b)(33)</a>
“Security certificate”	Section 8-102(a)(16)

#### **Section 8-106. Control**

\* \* \*

#### **Official Comment**

\* \* \*

#### **Definitional Cross References:**

“Bearer form”	Section 8-102(a)(2)
“Certificated security”	Section 8-102(a)(4)
“Delivery”	Section 8-301
“Effective”	Section 8-107
“Entitlement holder”	Section 8-102(a)(7)
“Entitlement order”	Section 8-102(a)(8)
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Registered form”	Section 8-102(a)(13)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)
“Uncertificated security”	Section 8-102(a)(18)

### Section 8-107. Whether Indorsement, Instruction, or Entitlement Order Is Effective

\* \* \*

#### Official Comment

\* \* \*

#### Definitional Cross References:

“Entitlement order”	Section 8-102(a)(8)
“Financial asset”	Section 8-102(a)(9)
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Representative”	Section <del>1-201(35)</del> <a href="#">1-201(b)(33)</a>
“Securities account”	Section 8-501
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Security entitlement”	Section 8-102(a)(17)
“Uncertificated security”	Section 8-102(a)(18)

### Section 8-108. Warranties in Direct Holding

\* \* \*

#### Official Comment

\* \* \*

5. Under Section ~~1-102(3)~~[1-302\(a\)](#) the warranty provisions apply “unless otherwise agreed” and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.

**Definitional Cross References:**

“Adverse claim”	Section 8-102(a)(1)
“Appropriate person”	Section 8-107
“Broker”	Section 8-102(a)(3)
“Certificated security”	Section 8-102(a)(4)
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Person”	Section <del>1-201(30)</del> <a href="#">1-201(b)(27)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Secured party”	Section 9-102(a)(72)
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-109. Warranties in Indirect Holding**

\* \* \*

**Official Comment**

\* \* \*

3. As with the Section 8-108 warranties, the warranties specified in this section may be modified by agreement under Section ~~1-102(3)~~[1-302\(a\)](#).

**Definitional Cross References:**

“Adverse claim”	Section 8-102(a)(1)
“Appropriate person”	Section 8-107
“Entitlement holder”	Section 8-102(a)(7)
“Entitlement order”	Section 8-102(a)(8)
“Instruction”	Section 8-102(a)(12)
“Person”	Section <del>1-201(30)</del> <a href="#">1-201(b)(27)</a>
“Securities account”	Section 8-501
“Securities intermediary”	Section 8-102(a)(14)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)

## Section 8-110. Applicability; Choice of Law

\* \* \*

### Official Comment

\* \* \*

2. \* \* \*

Although subsection (a) provides that the issuer's rights and duties concerning registration of transfer are governed by the law of the issuer's jurisdiction, other matters related to registration of transfer, such as appointment of a guardian for a registered owner or the existence of agency relationships, might be governed by another jurisdiction's law. Neither this section nor ~~Section 1-105 (Revised Section 1-301)~~ deals with what law governs the appointment of the administrator or executor; that question is determined under generally applicable choice of law rules.

\* \* \*

5. \* \* \*

**Example 3:** John Doe, a resident of Kansas, maintains a securities account with Able & Co. Able is organized in Switzerland and has its chief executive offices there. The agreement between Doe and Able provides that New York is the securities intermediary's jurisdiction for purposes of UCC Article 8. The agreement was entered into before the Hague Securities Convention's effectiveness in the United States, does not expressly provide that New York or any other law is applicable to all the issues specified in article 2(1) of the Hague Securities Convention, and does not otherwise expressly refer to the Convention. Through the account, Doe holds securities of a Japanese issuer. Roe, who lives in Japan, claims ownership of the securities and seeks to hold Able liable for not transferring the asset to Roe. Because the agreement between Doe and Able was entered into before the Convention's effectiveness in the United States, Convention article 16(3) specifies that the controversy between Roe and Able is governed by the law of New York, but only if at the time of the agreement between Doe and Able, Able had an office in the United States engaged in a regular activity of maintaining securities accounts.

\* \* \*

#### Definitional Cross References:

"Adverse claim"	Section 8-102(a)(1)
"Agreement"	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
"Certificated security"	Section 8-102(a)(4)



1. In dealing with certificated securities the instrument itself is the vital thing, and therefore a valid levy cannot be made unless all possibility of the certificate's wrongfully finding its way into a transferee's hands has been removed. This can be accomplished only when the certificate is in the possession of a public officer, the issuer, or an independent third party. A debtor who has been enjoined can still transfer the security in contempt of court. See *Overlock v. Jerome-Portland Copper Mining Co.*, ~~29 Ariz. 560~~, 243 P. 400 ([Ariz.](#) 1926). Therefore, although injunctive relief is provided in subsection (e) so that creditors may use this method to gain control of the certificated security, the security certificate itself must be reached to constitute a proper levy whenever the debtor has possession.

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Issuer”	Section 8-201
“Secured party”	Section 9-102(a)(72)
“Securities intermediary”	Section 8-102(a)(14)
“Security certificate”	Section 8-102(a)(16)
“Security entitlement”	Section 8-102(a)(17)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-113. Statute of Frauds Inapplicable**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Action”	Section <del>1-201(1)</del> <a href="#">1-201(b)(1)</a>
“Contract”	Section <del>1-201(11)</del> <a href="#">1-201(b)(11)</a>
“Writing”	Section <del>1-201(46)</del> <a href="#">1-201(b)(43)</a>

**Section 8-114. Evidentiary Rules Concerning Certificated Securities**

\* \* \*

**Official Comment**

\* \* \*

### Definitional Cross References:

“Action”	Section <del>1-201(1)</del> <a href="#">1-201(b)(1)</a>
“Burden of establishing”	Section <del>1-201(8)</del> <a href="#">1-201(b)(8)</a>
“Certificated security”	Section 8-102(a)(4)
“Indorsement”	Section 8-102(a)(11)
“Issuer”	Section 8-201
“Presumed”	Section <del>1-201(31)</del> <a href="#">1-206</a>
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)

### Section 8-115. Securities Intermediary and Others Not Liable to Adverse Claimant

\* \* \*

#### Official Comment

\* \* \*

3. Except as provided in paragraph 3, this section applies even though the securities intermediary, or the broker or other agent or bailee, had notice or knowledge that another person asserts a claim to the securities. Consider the following examples:

**Example 3.** Same facts as in Example 1, except that before John Doe brought the XYZ Co. security certificate to Able for sale, Mary Doe telephoned or wrote to the firm asserting that she had an interest in all of John Doe’s securities and demanding that they not trade for him.

**Example 4.** Same facts as in Example 2, except that before Mary Roe gave an entitlement order to Baker to sell the XYZ Co. securities from her account, John Roe telephoned or wrote to the firm asserting that he had an interest in all of Mary Roe’s securities and demanding that they not trade for her.

Section 8-115 protects Able and Baker from liability. The protections of Section 8-115 do not depend on the presence or absence of notice of adverse claims. It is essential to the securities settlement system that brokers and securities intermediaries be able to act promptly on the directions of their customers. Even though a firm has notice that someone asserts a claim to a customer’s securities or security entitlements, the firm should not be placed in the position of having to make a legal judgment about the validity of the claim at the risk of liability either to its customer or to the third party for guessing wrong. Under this section, the broker or securities intermediary is privileged to act on the instructions of its customer or entitlement holder, unless it has been served with a restraining order or other legal process enjoining it from doing so. This is already the law in many jurisdictions. For example a section of the New York Banking Law provides that banks need not recognize any adverse claim to funds or securities on deposit with



them unless they have been served with legal process. N.Y. Banking Law § 134. Other sections of the UCC embody a similar policy. See Sections 3-602, ~~5-114(2)(b)~~[5-109\(a\)\(2\)](#).

\* \* \*

**Definitional Cross References:**

“Broker”	Section 8-102(a)(3)
“Effective”	Section 8-107
“Entitlement order”	Section 8-102(a)(8)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security certificate”	Section 8-102(a)(16)

**Section 8-116. Securities Intermediary as Purchaser for Value**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)
“Entitlement holder”	Section 8-102(a)(7)

**Section 8-201. Issuer**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Person”	Section <del>1-201(30)</del> <a href="#">1-201(b)(27)</a>
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-202. Issuer’s Responsibility and Defenses; Notice of Defect or Defense**

\* \* \*

## Official Comment

1. \* \* \*

Courts have generally held that an issuer is estopped from denying representations made in the text of a security. *Delaware-New Jersey Ferry Co. v. Leeds*, ~~21 Del.Ch. 279~~, 186 A. 913 (Del. Ch. Ct. 1936). Nor is a defect in form or the invalidity of a security normally available to the issuer as a defense. *Bonini v. Family Theatre Corp.*, ~~327 Pa. 273~~, 194 A. 498 (Pa. 1937); *First National Nat'l Bank of Fairbanks v. Alaska Airmotive, Inc.*, 119 F.2d 267 (C.C.A. Alaska 9th Cir. 1941).

\* \* \*

3. \* \* \*

Second, governmental issuers are distinguished in subsection (b) from other issuers as a matter of public policy, and additional safeguards are imposed before governmental issues are validated. Governmental issuers are estopped from asserting defenses only if there has been substantial compliance with the legal requirements governing the issue or if substantial consideration has been received and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security. The purpose of the substantial compliance requirement is to make certain that a mere technicality as, e.g., in the manner of publishing election notices, shall not be a ground for depriving an innocent purchaser of rights in the security. The policy is here adopted of such cases as *Tommie v. City of Gadsden*, ~~229 Ala. 521~~, 158 So. 763 (Ala. 1935), in which minor discrepancies in the form of the election ballot used were overlooked and the bonds were declared valid since there had been substantial compliance with the statute.

A long and well established line of federal cases recognizes the principle of estoppel in favor of purchasers for value without notices where municipalities issue bonds containing recitals of compliance with governing constitutional and statutory provisions, made by the municipal authorities entrusted with determining such compliance. *Chaffee County-Cty. v. Potter*, 142 U.S. 355 (1892); *Oregon v. Jennings*, 119 U.S. 74 (1886); *Gunnison County Commr'ssioners v. Rollins*, 173 U.S. 255 (1898). This rule has been qualified, however, by requiring that the municipality have power to issue the security. *Anthony v. County of Jasper*, 101 U.S. 693 (1879); *Town of South Ottawa v. Perkins*, 94 U.S. 260 (1876). This section follows the case law trend, simplifying the rule by setting up two conditions for an estoppel against a governmental issuer: (1) substantial consideration given, and (2) power in the issuer to borrow money or issue the security for the stated purpose. As a practical matter the problem of policing governmental issuers has been alleviated by the present practice of requiring legal opinions as to the validity of the issue. The bulk of the case law on this point is nearly 100 years old and it may be assumed that the question now seldom arises.

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security”	Section 8-102(a)(15)
“Uncertificated security”	Section 8-102(a)(18)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-203. Staleness as Notice of Defect or Defense**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-204. Effect of Issuer’s Restriction on Transfer**

\* \* \*

**Official Comment**

\* \* \*

5. This section deals only with restrictions imposed by the issuer. Restrictions imposed by statute are not affected. See *Quiner v. Marblehead Social Co.*, 10 Mass. 476 (1813); *Madison Bank v. Price*, ~~79 Kan. 289~~, 100 P. 280 ([Kan.](#) 1909); *Healey v. Steele Center Creamery Ass’n*, ~~115 Minn. 451~~, 133 N.W. 69 ([Minn.](#) 1911). Nor does it deal with private agreements between stockholders containing restrictive covenants as to the sale of the security.

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Conspicuous”	Section <del>1-201(10)</del> <a href="#">1-201(b)(1)</a>

“Issuer”	Section 8-201
“Knowledge”	Section <del>1-201(25)</del> 1-202(b)
“ <del>Notify</del> Notifies”	Section <del>1-201(25)</del> 1-202(d)
“Purchaser”	Sections <del>1-201(33)</del> 1-201(b)(30) & 8-116
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)

## Section 8-205. Effect of Unauthorized Signature on Security Certificate

\* \* \*

### Official Comment

1. The problem of forged or unauthorized signatures may arise where an employee of the issuer, transfer agent, or registrar has access to securities which the employee is required to prepare for issue by affixing the corporate seal or by adding a signature necessary for issue. This section is based upon the issuer’s duty to avoid the negligent entrusting of securities to such persons. Issuers have long been held responsible for signatures placed upon securities by parties whom they have held out to the public as authorized to prepare such securities. See *Fifth Avenue Bank of New York v. The Forty-Second & Grand Street Ferry Railroad RR. Co.*, ~~137 N.Y. 231~~, 33 N.E. 378, ~~19 L.R.A. 331~~, ~~33 Am.St.Rep. 712~~ (N.Y. 1893); *Jarvis v. Manhattan Beach Co.*, ~~148 N.Y. 652~~, 43 N.E. 68, ~~31 L.R.A. 776~~, ~~51 Am.St.Rep. 727~~ (N.Y. 1896). The “apparent authority” concept of some of the case-law, however, is here extended and this section expressly rejects the technical distinction, made by courts reluctant to recognize forged signatures, between cases where forgers sign signatures they are authorized to sign under proper circumstances and those in which they sign signatures they are never authorized to sign. *Citizens’ & Southern National Bank v. Trust Co. of Georgia*, ~~50 Ga.App. 681~~, 179 S.E. 278 (Ga. Ct. App. 1935). Normally the purchaser is not in a position to determine which signature a forger, entrusted with the preparation of securities, has “apparent authority” to sign. The issuer, on the other hand, can protect itself against such fraud by the careful selection and bonding of agents and employees, or by action over against transfer agents and registrars who in turn may bond their personnel.

2. The issuer cannot be held liable for the honesty of employees not entrusted, directly or indirectly, with the signing, preparation, or responsible handling of similar securities and whose possible commission of forgery it has no reason to anticipate. The result in such cases as *Hudson Trust Co. v. American Linseed Co.*, ~~232 N.Y. 350~~, 134 N.E. 178 (N.Y. 1922), and *Dollar Savings Fund & Trust Co. v. Pittsburgh Plate Glass Co.*, ~~213 Pa. 307~~, 62 A. 916, ~~5 Ann.Cas. 248~~ (Pa. 1906), is here adopted.

\* \* \*

### Definitional Cross References:

“Certificated security”	Section 8-102(a)(4)
-------------------------	---------------------

“Issuer”	Section 8-201
“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security certificate”	Section 8-102(a)(14)
“Unauthorized signature”	Section <del>1-201(43)</del> <a href="#">1-201(b)(41)</a>

### Section 8-206. Completion or Alteration of Security Certificate

\* \* \*

#### Official Comment

\* \* \*

#### Definitional Cross References:

“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security certificate”	Section 8-102(a)(16)
“Unauthorized signature”	Section <del>1-201(43)</del> <a href="#">1-201(b)(41)</a>
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

### Section 8-207. Rights and Duties of Issuer with Respect to Registered Owners

\* \* \*

#### Official Comment

\* \* \*

2. Subsection (a) is permissive and does not require that the issuer deal exclusively with the registered owner. It is free to require proof of ownership before paying out dividends or the like if it chooses to. *Barbato v. Breeze Corp.*, ~~128 N.J.L. 309~~, 26 A.2d 53 ([N.J.](#) 1942).

\* \* \*

4. No change in existing state laws as to the liability of registered owners for calls and assessments is here intended; nor is anything in this section designed to estop record holders from denying ownership when assessments are levied if they are otherwise entitled to do so under state law. See *State ex rel. Squire v. Murfey, Blosson & Co.*, ~~131 Ohio St. 289~~, 2 N.E.2d 866 ([Ohio](#) 1936); *Willing v. Delaplaine*, 23 ~~F.Supp.~~[F. Supp.](#) 579 ([E.D. Pa.](#) 1937).

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Registered form”	Section 8-102(a)(13)
“Security”	Section 8-102(a)(15)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-208. Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent**

\* \* \*

**Official Comment**

1. The warranties here stated express the current understanding and prevailing case law as to the effect of the signatures of authenticating trustees, transfer agents, and registrars. See *Jarvis v. Manhattan Beach Co.*, ~~148 N.Y. 652~~, 43 N.E. 68, ~~31 L.R.A. 776~~, ~~51 Am.St.Rep. 727~~ (N.Y. 1896). Although it has generally been regarded as the particular obligation of the transfer agent to determine whether securities are in proper form as provided by the by-laws and Articles of Incorporation, neither a registrar nor an authenticating trustee should properly place a signature upon a certificate without determining whether it is at least regular on its face. The obligations of these parties in this respect have therefore been made explicit in terms of due care. See *Feldmeier v. Mortgage Securities, Inc.*, ~~34 Cal.App.2d 201~~, 93 P.2d 593 (Cal. Ct. App. 1939).

2. Those cases which hold that an authenticating trustee is not liable for any defect in the mortgage or property which secures the bond or for any fraudulent misrepresentations made by the issuer are not here affected since these matters do not involve the genuineness or proper form of the security. *Ainsa v. Mercantile Trust Co.*, ~~174 Cal. 504~~, 163 P. 898 (Cal. 1917); *Tschetinian v. City Trust Co.*, ~~186 N.Y. 432~~, 79 N.E. 401 (N.Y. 1906); *Davidge v. Guardian Trust Co. of New York*, ~~203 N.Y. 331~~, 96 N.E. 751 (N.Y. 1911).

\* \* \*

4. Authenticating trustees, registrars, and transfer agents have normally been held liable for an issue in excess of the authorized amount. *Jarvis v. Manhattan Beach Co.*, supra; *Mullen v. Eastern Trust & Banking Co.*, ~~108 Me. 498~~, 81 A. 948 (Me. 1911). In imposing upon these parties a duty of due care with respect to the amount they are authorized to help issue, this section does not necessarily validate the security, but merely holds persons responsible for the excess issue liable in damages for any loss suffered by the purchaser.

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Genuine”	Section <del>1-201(18)</del> <a href="#">1-201(b)(19)</a>
“Issuer”	Section 8-201
“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

### Section 8-209. Issuer’s Lien

\* \* \*

#### Official Comment

\* \* \*

#### Definitional Cross References:

“Certificated security”	Section 8-102(a)(4)
“Issuer”	Section 8-201
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)

### Section 8-210. Overissue

\* \* \*

#### Official Comment

1. Deeply embedded in corporation law is the conception that “corporate power” to issue securities stems from the statute, either general or special, under which the corporation is organized. Corporation codes universally require that the charter or articles of incorporation state, at least as to capital shares, maximum limits in terms of number of shares or total dollar capital. Historically, special incorporation statutes are similarly drawn and sometimes similarly limit the face amount of authorized debt securities. The theory is that issue of securities in excess of the authorized amounts is prohibited. See, for example, *McWilliams v. Geddes & Moss Undertaking Co.*, 169 So. 894 (~~1936~~, La. [1936](#)); *Crawford v. Twin City Oil Co.*, ~~216 Ala. 216~~, 113 So. 61 ([Ala.](#) 1927); *New York and New Haven R.R. Co. v. Schuyler*, 34 N.Y. 30 (1865). This conception persists despite modern corporation codes under which, by action of directors and stockholders, additional shares can be authorized by charter amendment and thereafter issued. This section does not give a person entitled to validation, issue, or reissue of a security, the right

to compel amendment of the charter to authorize additional shares. Therefore, in a case where issue of an additional security would require charter amendment, the plaintiff is limited to the two alternate remedies set forth in subsections (c) and (d). The last clause of subsection (a), which is added in Revised Article 8, does, however, recognize that under modern conditions, overissue may be a relatively minor technical problem that can be cured by appropriate action under governing corporate law.

2. Where an identical security is reasonably available for purchase, whether because traded on an organized market, or because one or more security owners may be willing to sell at a not unreasonable price, the issuer, although unable to issue additional shares, will be able to purchase them and may be compelled to follow that procedure. *West v. Tintic Standard Mining Co.*, ~~71 Utah 158~~, 263 P. 490 ([Utah](#) 1928).

3. The right to recover damages from an issuer who has permitted an overissue to occur is well settled. *New York and New Haven R.R. Co. v. Schuyler*, 34 N.Y. 30 (1865). The measure of such damages, however, has been open to question, some courts basing them upon the value of stock at the time registration is refused; some upon the value at the time of trial; and some upon the highest value between the time of refusal and the time of trial. *Allen v. South Boston Railroad*, ~~150 Mass. 200~~, 22 N.E. 917, ~~5 L.R.A. 716~~, ~~15 Am.St.Rep. 185~~ ([Mass.](#) 1889); *Commercial Bank v. Kortright*, 22 Wend. (N.Y.) 348 (1839). The purchase price of the security to the last purchaser who gave value for it is here adopted as being the fairest means of reducing the possibility of speculation by the purchaser. Interest may be recovered as the best available measure of compensation for delay.

**Definitional Cross References:**

“Issuer”	Section 8-201
“Security”	Section 8-102(a)(15)
“Security certificate”	Section 8-102(a)(16)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-301. Delivery**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Effective”	Section 8-107
“Issuer”	Section 8-201
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Registered form”	Section 8-102(a)(13)



“Securities intermediary”	Section 8-102(a)(14)
“Security certificate”	Section 8-102(a)(16)
“Special indorsement”	Section 8-304(a)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-302. Rights of Purchaser**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Notice of adverse claim”	Section 8-105
“Protected purchaser”	Section 8-303
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Uncertificated security”	Section 8-102(a)(18)
“Delivery”	Section 8-301

**Section 8-303. Protected Purchaser**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Adverse claim”	Section 8-102(a)(1)
“Certificated security”	Section 8-102(a)(4)
“Control”	Section 8-106
“Notice of adverse claim”	Section 8-105
“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Uncertificated security”	Section 8-102(a)(18)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-304. Indorsement**

\* \* \*

**Official Comment**

\* \* \*

3. Subsection (c) deals with the effect of an indorsement without delivery. There must be a voluntary parting with control in order to effect a valid transfer of a certificated security as between the parties. *Levey v. Nason*, ~~279 Mass. 268~~, 181 N.E. 193 ([Mass.](#) 1932), and *National Surety Co. v. Indemnity Insurance Co. of North America*, ~~237 App.Div. 485~~, 261 N.Y.S. 605 ([App. Div.](#) 1933). The provision in Section 10 of the Uniform Stock Transfer Act that an attempted transfer without delivery amounts to a promise to transfer is omitted. Even under that Act the effect of such a promise was left to the applicable law of contracts, and this Article by making no reference to such situations intends to achieve a similar result. With respect to delivery there is no counterpart to subsection (d) on right to compel indorsement, such as is envisaged in *Johnson v. Johnson*, ~~300 Mass. 24~~, 13 N.E.2d 788 ([Mass.](#) 1938), where the transferee under a written assignment was given the right to compel a transfer of the certificate.

4. \* \* \*

The transferee's right to compel an indorsement where a security certificate has been delivered with intent to transfer is recognized in the case law. See *Coats v. Guaranty Bank & Trust Co.*, ~~170 La. 871~~, 129 So. 513 ([La.](#) 1930). A proper indorsement is one of the requisites of transfer which a purchaser of a certificated security has a right to obtain (Section 8-307). A purchaser may not only compel an indorsement under that section but may also recover for any reasonable expense incurred by the transferor's failure to respond to the demand for an indorsement.

\* \* \*

**Definitional Cross References:**

"Bearer form"	Section 8-102(a)(2)
"Certificated security"	Section 8-102(a)(4)
"Indorsement"	Section 8-102(a)(11)
"Purchaser"	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
"Registered form"	Section 8-102(a)(13)
"Security certificate"	Section 8-102(a)(16)

**Section 8-305. Instruction**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Appropriate person”	Section 8-107
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201

**Section 8-306. Effect of Guaranteeing Signature, Indorsement, or Instruction**

\* \* \*

**Official Comment**

\* \* \*

2. The rationale of the principle that a signature guarantor warrants the authority of the signer, rather than simply the genuineness of the signature, was explained in the leading case of *Jennie Clarkson Home for Children v. Missouri, K. & T. R. Co.*, ~~182 N.Y. 47~~, 74 N.E. 571, ~~70 A.L.R. 787~~ (N.Y. 1905), which dealt with a guaranty of the signature of a person indorsing on behalf of a corporation. “If stock is held by an individual who is executing a power of attorney for its transfer, the member of the exchange who signs as a witness thereto guaranties not only the genuineness of the signature affixed to the power of attorney, but that the person signing is the individual in whose name the stock stands. With reference to stock standing in the name of a corporation, which can only sign a power of attorney through its authorized officers or agents, a different situation is presented. If the witnessing of the signature of the corporation is only that of the signature of a person who signs for the corporation, then the guaranty is of no value, and there is nothing to protect purchasers or the companies who are called upon to issue new stock in the place of that transferred from the frauds of persons who have signed the names of corporations without authority. If such is the only effect of the guaranty, purchasers and transfer agents must first go to the corporation in whose name the stock stands and ascertain whether the individual who signed the power of attorney had authority to so do. This will require time, and in many cases will necessitate the postponement of the completion of the purchase by the payment of the money until the facts can be ascertained. The broker who is acting for the owner has an opportunity to become acquainted with his customer, and may readily before sale ascertain, in case of a corporation, the name of the officer who is authorized to execute the power of attorney. It was therefore, we think, the purpose of the rule to cast upon the broker who witnesses the signature the duty of ascertaining whether the person signing the name of the corporation had authority to so do, and making the witness a guarantor that it is the signature of the corporation in whose name the stock stands.”

**Definitional Cross References:**

“Appropriate person”	Section 8-107
“Genuine”	Section <del>1-201(18)</del> <a href="#">1-201(b)(19)</a>
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Security certificate”	Section 8-102(a)(16)

“Uncertificated security”                      Section 8-102(a)(18)

**Section 8-307. Purchaser’s Right to Requisites for Registration of Transfer**

\* \* \*

**Official Comment**

\* \* \*

1. Because registration of the transfer of a security is a matter of vital importance, a

**Definitional Cross References:**

“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Security”	Section 8-102(a)(15)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-401. Duty of Issuer to Register Transfer**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Appropriate person”	Section 8-107
“Certificated security”	Section 8-102(a)(4)
“Genuine”	Section <del>1-201(18)</del> <a href="#">1-201(b)(19)</a>
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Protected purchaser”	Section 8-303
“Registered form”	Section 8-102(a)(13)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-402. Assurance That Indorsement or Instruction Is Effective**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Appropriate person”	Section 8-107
“Genuine”	Section <del>1-201(18)</del> <a href="#">1-201(b)(19)</a>
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201

**Section 8-403. Demand That Issuer Not Register Transfer**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Appropriate person”	Section 8-107
“Certificated security”	Section 8-102(a)(4)
“Communicate”	Section 8-102(a)(6)
“Effective”	Section 8-107
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Registered form”	Section 8-102(a)(13)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-404. Wrongful Registration**

\* \* \*

**Official Comment**

\* \* \*

1. \* \* \*

Subsection (b) specifies the remedy for wrongful registration. Pre-Code cases established the registered owner’s right to receive a new security where the issuer had wrongfully registered a transfer, but some cases also allowed the registered owner to elect between an equitable action to compel issue of a new security and an action for damages. Cf. *Casper v. Kalt-Zimmers Mfg. Co.*, ~~159 Wis. 517~~, 149 N.W. 754 ([Wis.](#) 1914). Article 8 does not allow such election. The true owner of a certificated security is required to take a new security except where an overissue

would result and a similar security is not reasonably available for purchase. See Section 8-210. The true owner of an uncertificated security is entitled and required to take restoration of the records to their proper state, with a similar exception for overissue.

\* \* \*

**Definitional Cross References:**

“Certificated security”	Section 8-102(a)(4)
“Effective”	Section 8-107
“Indorsement”	Section 8-102(a)(11)
“Instruction”	Section 8-102(a)(12)
“Issuer”	Section 8-201
“Security”	Section 8-102(a)(15)
“Uncertificated security”	Section 8-102(a)(18)

**Section 8-405. Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate**

\* \* \*

**Official Comment**

\* \* \*

2. Where an “original” security certificate has reached the hands of a protected purchaser, the registered owner – who was in the best position to prevent the loss, destruction or theft of the security certificate – is now deprived of the new security certificate issued as a replacement. This changes the pre-UCC law under which the original certificate was ineffective after the issue of a replacement except insofar as it might represent an action for damages in the hands of a purchaser for value without notice. *Keller v. Eureka Brick Mach. Mfg. Co.*, 43 Mo.App. 84, ~~11 L.R.A. 472~~ (1890). Where both the original and the new certificate have reached protected purchasers the issuer is required to honor both certificates unless an overissue would result and the security is not reasonably available for purchase. See Section 8-210. In the latter case alone, the protected purchaser of the original certificate is relegated to an action for damages. In either case, the issuer itself may recover on the indemnity bond.

**Definitional Cross References:**

“Bearer form”	Section 8-102(a)(2)
“Certificated security”	Section 8-102(a)(4)
“Issuer”	Section 8-201
“Notice”	Section <del>1-201(25)</del> <a href="#">1-202(a)</a>
“Overissue”	Section 8-210
“Protected purchaser”	Section 8-303
“Registered form”	Section 8-102(a)(13)

“Security certificate”

Section 8-102(a)(16)

### Section 8-406. Obligation to Notify Issuer of Lost, Destroyed, or Wrongfully Taken Security Certificate

\* \* \*

#### Official Comment

\* \* \*

#### Definitional Cross References:

“Issuer”

Section 8-201

“~~Notify~~[Notifies](#)”

Section ~~1-201(25)~~[1-202\(d\)](#)

“Security certificate”

Section 8-102(a)(16)

### Section 8-407. Authenticating Trustee, Transfer Agent, and Registrar

\* \* \*

#### Official Comment

1. Transfer agents, registrars, and the like are here expressly held liable both to the issuer and to the owner for wrongful refusal to register a transfer as well as for wrongful registration of a transfer in any case within the scope of their respective functions where the issuer would itself be liable. Those cases which have regarded these parties solely as agents of the issuer and have therefore refused to recognize their liability to the owner for mere non-feasance, i.e., refusal to register a transfer, are rejected. *Hulse v. Consolidated Quicksilver Mining Corp.*, ~~65 Idaho 768~~, 154 P.2d 149 ([Id.](#) 1944); *Nicholson v. Morgan*, ~~119 Misc. 309~~, 196 ~~N.Y. Supp.~~[N.Y.S.](#) 147 ([Mun. Ct.](#) 1922); *Lewis v. Hargadine-McKittrick Dry Goods Co.*, ~~305 Mo. 396~~, 274 S.W. 1041 ([Mo.](#) 1924).

\* \* \*

#### Definitional Cross References:

“Certificated security”

Section 8-102(a)(4)

“Issuer”

Section 8-201

“Security”

Section 8-102(a)(15)

“Security certificate”

Section 8-102(a)(16)

“Uncertificated security”

Section 8-102(a)(18)

**Section 8-501. Securities Account; Acquisition of Security Entitlement From Securities Intermediary**

\* \* \*

**Official Comment**

\* \* \*

6. ~~**Enforceability of Rights and Obligations.**~~ Rights and obligations relating to a security entitlement are enforceable by action. See Section 1-305(b) and PEB Commentary No. 25, dated August 12, 2022. The Commentary is available at <https://www.ali.org/peb-ucc>.

**Definitional Cross References:**

“Financial asset”	Section 8-102(a)(9)
“Indorsement”	Section 8-102(a)(11)
“Securities intermediary”	Section 8-102(a)(14)
“Security”	Section 8-102(a)(15)
“Security entitlement”	Section 8-102(a)(17)

**Section 8-502. Assertion of Adverse Claim against Entitlement Holder**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Adverse claim”	Section 8-102(a)(1)
“Financial asset”	Section 8-102(a)(9)
“Notice of adverse claim”	Section 8-105
“Security entitlement”	Section 8-102(a)(17)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-503. Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary**

\* \* \*

**Official Comment**

\* \* \*



3. \* \* \*

Rather than imposing duties to investigate, the general policy of the commercial law of the securities holding and transfer system has been to eliminate legal rules that might induce participants to conduct investigations of the authority of persons transferring securities on behalf of others for fear that they might be held liable for participating in a wrongful transfer. The rules in Part 4 of Article 8 concerning transfers by fiduciaries provide a good example. Under *Lowry v. Commercial & Farmers' Bank*, 15 F. Cas. 1040 (~~C.C.D.~~[Cir. Ct.](#) Md. 1848) (~~No. 8551~~), an issuer could be held liable for wrongful transfer if it registered transfer of securities by a fiduciary under circumstances where it had any reason to believe that the fiduciary may have been acting improperly. In one sense that seems to be advantageous for beneficiaries who might be harmed by wrongful conduct by fiduciaries. The consequence of the *Lowry* rule, however, was that in order to protect against risk of such liability, issuers developed the practice of requiring extensive documentation for fiduciary stock transfers, making such transfers cumbersome and time consuming. Accordingly, the rules in Part 4 of Article 8, and in the prior fiduciary transfer statutes, were designed to discourage transfer agents from conducting investigations into the rightfulness of transfers by fiduciaries.

\* \* \*

**Definitional Cross References:**

“Control”	Section 8-106
“Entitlement holder”	Section 8-102(a)(7)
“Financial asset”	Section 8-102(a)(9)
“Insolvency <del>proceedings</del> <a href="#">proceeding</a> ”	Section <del>1-201(22)</del> <a href="#">1-201(b)(22)</a>
“Purchaser”	Sections 1-201(33) & 8-116
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

**Section 8-504. Duty of Securities Intermediary to Maintain Financial Asset**

\* \* \*

**Official Comment**

\* \* \*

4. \* \* \*

Subsection (c)(1) provides that a securities intermediary satisfies the duty stated in subsection (a) if the intermediary acts with respect to that duty in accordance with the agreement between the intermediary and the entitlement holder. Subsection (c)(2) provides that if there is

no agreement on the matter, the intermediary satisfies the subsection (a) duty if the intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset in question. This formulation does not state that the intermediary has a universally applicable statutory duty of due care. Section ~~1-102(3)~~[1-302\(b\)](#) provides that statutory duties of due care cannot be disclaimed by agreement, but the “agreement/due care” formula contemplates that there may be particular circumstances where the parties do not wish to create a specific duty of due care, for example, with respect to foreign securities. Under subsection (c)(1), compliance with the agreement constitutes satisfaction of the subsection (a) duty, whether or not the agreement provides that the intermediary will exercise due care.

In each of the sections where the “agreement/due care” formula is used, it provides that entering into an agreement and performing in accordance with that agreement is a method by which the securities intermediary may satisfy the statutory duty stated in that section. Accordingly, the general obligation of good faith performance of statutory and contract duties, see Sections ~~1-203~~[1-304](#) and 8-102(a)(10), would apply to such an agreement. It would not be consistent with the obligation of good faith performance for an agreement to purport to establish the usual sort of arrangement between an intermediary and entitlement holder, yet disclaim altogether one of the basic elements that define that relationship. For example, an agreement stating that an intermediary assumes no responsibilities whatsoever for the safekeeping any of the entitlement holder’s securities positions would not be consistent with good faith performance of the intermediary’s duty to obtain and maintain financial assets corresponding to the entitlement holder’s security entitlements.

\* \* \*

**Definitional Cross References:**

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Clearing corporation”	Section 8-102(a)(5)
“Entitlement holder”	Section 8-102(a)(7)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)

**Section 8-505. Duty of Securities Intermediary with Respect to Payments and Distributions**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Entitlement holder”	Section 8-102(a)(7)

“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)

**Section 8-506. Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Entitlement holder”	Section 8-102(a)(7)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)

**Section 8-507. Duty of Securities Intermediary to Comply with Entitlement Order**

\* \* \*

**Official Comment**

\* \* \*

**Definitional Cross References:**

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Appropriate person”	Section 8-107
“Effective”	Section 8-107
“Entitlement holder”	Section 8-102(a)(7)
“Entitlement order”	Section 8-102(a)(8)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)

**Section 8-508. Duty of Securities Intermediary to Change Entitlement Holder’s Position to Other Form of Security Holding**

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Entitlement holder”	Section 8-102(a)(7)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)

## Section 8-509. Specification of Duties of Securities Intermediary by Other Statute or Regulation; Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Agreement”	Section <del>1-201(3)</del> <a href="#">1-201(b)(3)</a>
“Entitlement holder”	Section 8-102(a)(7)
“Securities intermediary”	Section 8-102(a)(14)
“Security agreement”	Section 9-102(a)(73)
“Security interest”	Section <del>1-201(37)</del> <a href="#">1-201(b)(35)</a>

## Section 8-510. Rights of Purchaser of Security Entitlement from Entitlement Holder

\* \* \*

## Official Comment

\* \* \*

### Definitional Cross References:

“Adverse claim”	Section 8-102(a)(1)
“Control”	Section 8-106
“Entitlement holder”	Section 8-102(a)(7)
“Notice of adverse claim”	Section 8-105
“Purchase”	Section <del>1-201(32)</del> <a href="#">1-201(b)(29)</a>

“Purchaser”	Sections <del>1-201(33)</del> <a href="#">1-201(b)(30)</a> & 8-116
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

### Section 8-511. Priority among Security Interests and Entitlement Holders

\* \* \*

#### Official Comment

\* \* \*

#### Definitional Cross References:

“Clearing corporation”	Section 8-102(a)(5)
“Control”	Section 8-106
“Entitlement holder”	Section 8-102(a)(7)
“Financial asset”	Section 8-102(a)(9)
“Securities intermediary”	Section 8-102(a)(14)
“Security entitlement”	Section 8-102(a)(17)
“Security interest”	Section <del>1-201(37)</del> <a href="#">1-201(b)(35)</a>
“Value”	Sections <del>1-201(44)</del> <a href="#">1-204</a> & 8-116

## ARTICLE 9 – SECURED TRANSACTIONS

### Section 9-101. Short Title

\* \* \*

### Official Comment

\* \* \*

#### 3. \* \* \*

f. **Proceeds.** Revised Section 9-102 provides an expanded definition of “proceeds” of collateral, which includes additional rights and property that arise out of collateral, such as distributions on account of collateral and claims arising out of the loss or nonconformity of, defects in, or damage to collateral. The revised definition of “proceeds” also includes collections on account of “supporting obligations,” such as guarantees.

\* \* \*

#### j. **Consumer Goods, Consumer-goods Transactions, and Consumer Transactions.**

\* \* \*

(i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with enhanced rights to possession of the goods, thereby accelerating and enhancing the opportunity to achieve “buyer in ordinary course of business” status under Section ~~1-201~~[1-201\(b\)\(9\)](#).

\* \* \*

#### 4. **Summary of 2022 Article 9 Revisions.** \* \* \*

##### b. **Chattel Paper-Related Amendments.** \* \* \*

First, the definition of “chattel paper” created uncertainty in “bundled” or “hybrid” transactions in which monetary obligations exist not only under a lease of goods but also with respect to other property and services relating to the leased goods. Frequently, the value of the non-goods aspect of a transaction is substantially greater than the value of the lessee’s rights under the lease of goods. Uncertainty existed among those who finance chattel paper and other rights to payment as to whether these transactions give rise to chattel paper. The revisions resolve this issue by treating only those transactions whose predominant purpose was to give the obligor (lessee) the right to possession and use of the goods as giving rise to “chattel paper.” Some similar issues arise in connection with chattel paper that includes a security interest ~~securing in~~[in](#) specific goods. See Section 9-102, Comment 5.b.

\* \* \*

## Section 9-102. Definitions and Index of Definitions

\* \* \*

### Official Comment

\* \* \*

#### 2. Parties to Secured Transactions. \* \* \*

##### b.1. \* \* \*

The 2022 Article 9 Revisions added new definitions of “assignee” and “assignor.” Paragraph 7A defines “assignee” as a person in whose favor a security interest securing an obligation is created or to which an account, chattel paper, a payment intangible, or a promissory note has been sold. Paragraph 7B defines “assignor” as [a person](#) creating a security interest securing an obligation or that sells an account, chattel paper, a payment intangible, or a promissory note. These definitions incorporate the essence of the 2020 PEB Commentary into the statutory text. The definitions also specify that an “assignor” includes a secured party that transfers a security interest to another person and an “assignee” includes a person to which a security interest has been transferred by a secured party. By their terms, the defined terms “assignee” and “assignor” contemplate assignments in particular contexts. However, several references in this article to “assigned,” “assignment” and “assignee” include transfers in broader contexts than those addressed in the defined terms. See, e.g., subsection (a)(2) (“assigned,” in definition of “account”) and (a)(47) (“assignment,” in definition of “instrument”) and Sections 9-109, 9-408, 9-409, and 9-519.

\* \* \*

#### 3. Definitions Relating to Creation of a Security Interest.

\* \* \*

##### b. “Security Agreement.” \* \* \*

Whether an agreement creates a security interest depends not on whether the parties intend that the law *characterize* the transaction as a security interest but rather on whether the transaction falls within the definition of “security interest” in Section ~~1-201~~[1-201\(b\)\(35\)](#). Thus, an agreement that the parties characterize as a “lease” of goods may be a “security agreement,” notwithstanding the parties’ stated intention that the law treat the transaction as a lease and not as a secured transaction. See Section 1-203.

\* \* \*

## 5. Receivables-related Definitions.

\* \* \*

### h. “Account Debtor.” \* \* \*

The definition of “account debtor” was revised in 2022 to add the modifier “negotiable” to the second reference to “instrument,” making it clear that an obligor on a negotiable instrument is not an account debtor. This amendment (which is intended to clarify and not to change the meaning of the definition) is useful because the definition of “instrument” has been revised to exclude writings that evidence chattel paper. However, the definition of “negotiable instrument” in Section ~~1-201~~[3-104](#) continues to apply under Article 9. See Section 9-102(a)(47) and (b); Comment 5.c. Of course, a record or records evidencing chattel paper must evidence either a security agreement or lease agreement in addition to a right to payment of a monetary obligation.

\* \* \*

## 9. Definitions Relating to Medium Neutrality.

\* \* \*

b. “Sign”; “Communicate”; “Send.” The defined term “authenticate” and “authenticated” has been deleted in the 2022 Article 9 Revisions. That term and “authenticated” were generally used in Article 9 instead of “sign” and “signed.” However, the 2022 revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#) encompasses authentication of all records, not just writings. Accordingly, “sign” and “signed” are now used in Article 9. (References to signing of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms “communicate” and “send” also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The 2022 Amendments deleted the definition of “send” in this section and ~~added a~~[modified the](#) corresponding definition ~~to~~[in](#) Section ~~1-201~~[1-201\(b\)\(36\)](#), replacing the pre-2022 definition in that section.

\* \* \*

## 11. Choice-of-Law-Related Definitions: “Certificate of Title”; “Governmental Unit”; “Jurisdiction of Organization”; “Public Organic Record;” “Registered Organization”; “State.” \* \* \*

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a “registered organization.” Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform



Statutory Trust Entity Act § 201 (2009); Delaware Statutory Trust Act, Del. Code Ann. tit. 12, § 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a “legal or commercial entity,” it qualifies as a “person other than an individual,” and therefore as an “organization,” under Section ~~1-201~~[1-201\(b\)\(25\)](#). A statutory trust that is formed by the filing of a record in a public office is a “registered organization,” and the filed record is a “public organic record” of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be “available to the public for inspection” is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust – whether its purpose is donative or commercial – arises from private action without the filing of a record in a public office. See Uniform Trust Code § 401 (2000); Restatement (Third) of Trusts § 10 (2003). Moreover, under traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a “business trust,” i.e., that has a business or commercial purpose, is an “organization” under Section ~~1-201~~[1-201\(b\)\(25\)](#). However, such a trust would not be a “registered organization” if, as is typically the case, the filing of a public record is not needed to form it.

\* \* \*

**12A. Money-Related Definitions and Terms: “Money”; “Electronic Money”; “Tangible Money”; “Funds”; “Monetary Obligation.”** The Article 9 definition of “money” in subsection (a)(54A), added by the 2022 Article 9 Revisions, is a subset of the definition of “money” as defined in Section ~~1-201~~[1-201\(b\)\(24\)](#). It follows that cryptocurrencies, such as bitcoin, that are not “money” as defined in Section ~~1-201~~[1-201\(b\)\(24\)](#) because they were in existence and used before adoption by a government, also are not Article 9 money. An obligation to pay in such cryptocurrencies would not be an account, chattel paper, or a payment intangible or an obligation on an instrument because the obligation would not be a “monetary obligation” or an obligation to pay money. One purpose of the Article 9 definition is to ensure that even if some deposit accounts were to become “money” as defined in Article 1, the provisions relating to perfection and priority for security interests in deposit accounts, and not those for money, will apply to that collateral. Some countries may authorize or adopt deposit accounts with a central bank as a form of “money.” See Section 9-101, Comment 4.c. However, the Article 9 provisions governing “deposit accounts” would remain suitable for such accounts with a central bank, even if a government has adopted these accounts as money. The 2022 Article 9 Revisions leave Article 9’s treatment of deposit accounts largely unchanged. However, for purposes of Article 9 and in the interest of clarity, the definition of “money” in Section 9-102(a)(31A) excludes deposit accounts. Under this definition, deposit accounts would not be money for Article 9 purposes even if they were to become money under the Article 1 definition. Another purpose of the Article 9 definition of “money” is to exclude from that definition money (as defined in Section ~~1-201~~[1-201\(b\)\(24\)](#)) in an electronic form that cannot be subjected to control under Section 9-105A. Such property would be a general intangible, governed by the perfection and priority rules for that type of collateral.

\* \* \*

“Monetary obligation” as used in the Uniform Commercial Code (including in Article 9) is not a defined term. The term contemplates an obligation to pay “money” as defined in Section 1-201(b)(24). Consequently, for example, a right to payment of money in an electronic form that cannot be subjected to control, excluded from the Article 9 definition of “money” in subsection (a)(54A), would be a monetary obligation. It follows that such a right to payment could be an account, chattel paper, a payment intangible, or an instrument – including a negotiable instrument, which is defined to include a promise to pay “money” as the term is defined in Section ~~1-201~~[1-201\(b\)\(24\)](#). See Section 3-104(a) (defining “negotiable instrument”). Also, the term “funds” (like “monetary obligation,” an undefined term), as used in the Uniform Commercial Code includes a right to payment of money as defined in Section 1-201(b)(24). As mentioned above, because cryptocurrencies such as bitcoin are not “money” as defined in Section ~~1-201~~[1-201\(b\)\(24\)](#) (unless they were not in existence and used before adoption by a government), a cryptocurrency or an obligation to pay in cryptocurrency would not be a “monetary obligation” or “funds.”

\* \* \*

15. “**Accounting.**” This definition describes the record and information that a debtor is entitled to request under Section 9-210. Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this definition.

\* \* \*

23. “**Proposal.**” This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622. Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the 2022 revision of the definition adopts the cognate term “signed” to replace the term “authenticated” used in the pre-2022 text.

\* \* \*

## **Section 9-104. Control of Deposit Account**

\* \* \*

### **Official Comment**

\* \* \*

2. **Why “Control” Matters.** This section explains the concept of “control” of a deposit account. “Control” under this section may serve two functions. First, “control . . . pursuant to the debtor’s [security](#) agreement” may substitute for a signed security agreement as an element of attachment. See Section 9-203(b)(3)(D). Second, when a deposit account is taken as original collateral, the only method of perfection is obtaining control under this section. See Section 9-312(b)(1).

3. **Requirements for “Control.”** \* \* \*

As is the case with possession under Section 9-313, in determining whether a particular person has control under subsection (a), the principles of agency apply. See Section ~~1-103~~[1-103\(b\)](#) and Restatement (3d), Agency § 8.12, Comment *b*.

\* \* \*

**Section 9-108. Sufficiency of Description**

\* \* \*

**Official Comment**

\* \* \*

2. **General Rules.** \* \* \*

The purpose of requiring a description of collateral in a security agreement under Section 9-203 is evidentiary. The test of sufficiency of a description under this section, as under former Section 9-110, is that the description ~~do~~[does](#) the job assigned to it: make possible the identification of the collateral described. This section rejects any requirement that a description is insufficient unless it is exact and detailed (the so-called “serial number” test).

\* \* \*

**Section 9-109. Scope**

\* \* \*

**Official Comment**

\* \* \*

2. **Basic Scope Provision.** Subsection (a)(1) derives from former Section 9-102(1) and (2). These subsections have been combined and shortened. No change in meaning is intended.

Under subsection (a)(1), all consensual security interests in personal property and fixtures are covered by this Article, except for transactions excluded by subsections (c) and (d). As to which transactions give rise to a “security interest,” the definition of that term in Section ~~1-201~~[1-201\(b\)\(35\)](#) must be consulted. When a security interest is created, this Article applies regardless of the form of the transaction or the name that parties have given to it. Likewise, the subjective intention of the parties with respect to the legal characterization of their transaction is irrelevant to whether this Article applies, as it was to the application of former Article 9 under the proper interpretation of former Section 9-102.

\* \* \*

#### **5. Transfer of Ownership in Sales of Receivables. \* \* \***

Nothing in this section or any other provision of Article 9 prevents the transfer of full and complete ownership of an account, chattel paper, an instrument, or a payment intangible in a transaction of sale. However, as mentioned in Comment 4, neither this Article nor the definition of “security interest” in Section ~~1-201~~[1-201\(b\)\(35\)](#) provides rules for distinguishing sales transactions from those that create a security interest securing an obligation. This Article applies to both types of transactions. The principal effect of this coverage is to apply this Article’s perfection and priority rules to these sales transactions. Use of terminology such as “security interest,” “debtor,” and “collateral” is merely a drafting convention adopted to reach this end, and its use has no relevance to distinguishing sales from other transactions. See PEB Commentary No. 14.

\* \* \*

#### **6. Consignments. \* \* \***

Under common law, creditors of a bailee were unable to reach the interest of the bailor (in the case of a consignment, the consignor-owner). Like former Section 2-326 and former Article 9, this Article changes the common-law result; however, it does so in a different manner. For purposes of determining the rights and interests of third-party creditors of, and purchasers of the goods from, the consignee, but not for other purposes, such as remedies of the consignor, the consignee is deemed to acquire under this Article whatever rights and title the consignor had or had power to transfer. See Section 9-319. The interest of a consignor is defined to be a security interest under revised Section ~~1-201(37)~~[1-201\(b\)\(35\)](#), more specifically, a purchase-money security interest in the consignee’s inventory. See Section 9-103(d). Thus, the rules pertaining to lien creditors, buyers, and attachment, perfection, and priority of competing security interests apply to consigned goods. The relationship between the consignor and consignee is left to other law. Consignors also have no duties under Part 6. See Section 9-601(g).

\* \* \*

#### **9. Governmental Debtors. \* \* \***

**Example 4:** A Belgian governmental unit grants a security interest in its equipment to a Swiss secured party. The equipment is located in Belgium. A dispute arises and, for some reason, an action is brought in a New Mexico state court. Inasmuch as the transaction bears no “appropriate relation” to New Mexico, New Mexico’s UCC, including its Article 9, is inapplicable. See Section ~~1-105(1)~~[1-301\(b\)](#). New Mexico’s Section 9-109(c) on excluded transactions should not come into play. Even if the parties agreed that New Mexico law would govern, the parties’ agreement would not be effective because the transaction does not bear a “reasonable relation” to New Mexico. See Section ~~1-105(1)~~[1-301\(a\)](#).

\* \* \*

**16. Deposit Accounts.** Except in consumer transactions, deposit accounts may be taken as original collateral under this Article. Under former Section 9-104(*l*), deposit accounts were excluded as original collateral, leaving security interests in deposit accounts to be governed by the common law. The common law is nonuniform, often difficult to discover and comprehend, and frequently costly to implement. As a consequence, debtors who wished to use deposit accounts as collateral sometimes were precluded from doing so as a practical matter. By excluding deposit accounts from the Article’s scope as original collateral in consumer transactions, subsection (d)(13) leaves those transactions to law other than this Article. However, in both consumer and non-consumer transactions, ~~sections~~[Sections](#) 9-315 and 9-322 apply to deposit accounts as proceeds and with respect to priorities in proceeds.

\* \* \*

### **Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites**

\* \* \*

#### **Official Comment**

\* \* \*

**3. Security Agreement; Signed.** Under subsection (b)(3), enforceability requires the debtor’s security agreement and compliance with an evidentiary requirement in the nature of a Statute of Frauds. Paragraph (3)(A) represents the most basic of the evidentiary alternatives, under which the debtor must sign a security agreement that provides a description of the collateral. Under Section 9-102, a “security agreement” is “an agreement that creates or provides for a security interest.” Neither that definition nor the requirement of paragraph (3)(A) rejects the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown in fact to have been given as security. Under this Article, as under prior law, a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security. Similarly, a self-styled “lease” may serve as a security agreement if the agreement creates a security interest. See

Section 1-203 (distinguishing security interest from lease). Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate terms “signed” and “signing” replace the references to “authenticated” and “authentication” in the pre-2022 text of this Section.

\* \* \*

## **Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral**

\* \* \*

### **Official Comment**

\* \* \*

**2. Duty of Care for Collateral in Secured Party’s Possession.** Like former section 9-207, subsection (a) imposes a duty of care, similar to that imposed on a pledgee at common law, on a secured party in possession of collateral. See Restatement, Security §§ 17, 18. In many cases a secured party in possession of collateral may satisfy this duty by notifying the debtor of action that should be taken and allowing the debtor to take the action itself. If the secured party itself takes action, its reasonable expenses may be added to the secured obligation. The revised definitions of “collateral,” “debtor,” and “secured party” in Section 9-102 make this section applicable to collateral subject to an agricultural lien if the collateral is in the lienholder’s possession. Under Section ~~1-302~~[1-302\(b\)](#) the duty to exercise reasonable care may not be disclaimed by agreement, although under that section the parties remain free to determine by agreement standards that are not manifestly unreasonable as to what constitutes reasonable care. Unless otherwise agreed, for a secured party in possession of chattel paper or an instrument, reasonable care includes the preservation of rights against prior parties. The secured party’s right to have instruments or documents indorsed or transferred to it or its order is dealt with in the relevant sections of Articles 3, 7, and 8. See Sections 3-203(c), 7-506, 8-304(d).

\* \* \*

### **5. “Repledges” and Right of Redemption. \* \* \***

Whether SP-2 would be liable to D depends on the relative priority of SP-2’s security interest and D’s interest. By permitting SP-1 to create a security interest in the collateral (repledge), subsection (c)(3) provides a statutory power for SP-1 to give SP-2 a security interest (subject, of course, to any agreement by SP-1 not to give a security interest). In the vast majority of cases where repledge rights are significant, the security interest of the second secured party, SP-2 in the example, will be senior to the debtor’s interest. By virtue of the debtor’s consent or applicable legal rules, SP-2 typically would cut off D’s rights in investment property or be immune from D’s claims. See Sections 9-331, 3-306 (holder in due course), 8-303 (protected purchaser), 8-502 (acquisition of a security entitlement), 8-503(e) (action by entitlement holder).

[12-104 \(qualifying purchaser\)](#). Moreover, the expectations and business practices in some markets, such as the securities markets, are such that D’s consent to SP-2’s taking free of D’s rights inheres in D’s creation of SP-1’s security interest which gives rise to SP-1’s power under this section. In these situations, D would have no right to recover the collateral or recover damages from SP-2. Nevertheless, D would have a damage claim against SP-1 if SP-1 had given a security interest to SP-2 in breach of its agreement with D. Moreover, if SP-2’s security interest secures an amount that is less than the amount secured by SP-1’s security interest (granted by D), then D’s exercise of its right to redeem would provide value sufficient to discharge SP-1’s obligations to SP-2.

\* \* \*

### **Section 9-208. Additional Duties of Secured Party Having Control of Collateral**

\* \* \*

#### **Official Comment**

\* \* \*

2. **Scope and Purpose.** This section imposes duties on a secured party who has control of a deposit account, an electronic copy of a record evidencing chattel paper, investment property, a letter-of-credit right, an electronic document of title, electronic money, or a controllable electronic record. The duty to terminate the secured party’s control is analogous to the duty to file a termination statement, imposed by Section 9-513. Under subsection (a), it applies only when there is no outstanding secured obligation and the secured party is not committed to give value. The requirements of this section can be varied by agreement under Section ~~1-102(3)~~[1-302\(a\)](#). For example, a debtor could by contract agree that the secured party may comply with subsection (b) by releasing control more than 10 days after demand. Also, duties under this section should not be read to conflict with the terms of the collateral itself. For example, if the collateral is a time deposit account, subsection (b)(2) should not require a secured party with control to make an early withdrawal of the funds (assuming that were possible) in order to pay them over to the debtor or put them in an account in the debtor’s name.

\* \* \*

5. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces references to “authenticated” in the pre-2022 text of this section.

### **Section 9-209. Duties of Secured Party If Account Debtor Has Been Notified of Assignment**

\* \* \*

### Official Comment

\* \* \*

3. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~1-201(b)(37), the cognate term “signed” replaces references to “authenticated” in the pre-2022 text of this section.

### Section 9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account

\* \* \*

### Official Comment

\* \* \*

8. **“Signed” and “Signing” Replaces “Authenticated” and “Authenticating.”** Consistent with the revised definition of “sign” in Section ~~1-201~~1-201(b)(37), the cognate terms “signed” and “signing” replace references to “authenticated” and “authenticating” in the pre-2022 text of this section.

### Section 9-301. Law Governing Perfection and Priority of Security Interests

\* \* \*

### Official Comment

\* \* \*

#### 2. Scope of This Subpart. \* \* \*

This subpart does not address choice of law for other purposes. For example, the law applicable to issues such as attachment, validity, characterization of a transaction (e.g., true lease or security interest) as it affects rights between the parties to the transaction, and enforcement is governed by the rules in Section 1-301(a) and (b); that governing law typically is specified in the same agreement that contains the security agreement. And, another jurisdiction’s law may govern other third-party matters addressed in this Article. See Section 9-401, Comment 3. As to the law applicable to characterization, see PEB Commentary No. 24, dated August 12, 2022. The Commentary is available at <https://www.ali.org/peb-ucc>.



\* \* \*

**7. Law Governing Effect of Perfection and Priority: Goods, Documents, Instruments, Money, Negotiable Documents, and Tangible Chattel Paper. \* \* \***

Paragraph (3)(C) applies the law of the situs to determine priority only with respect to goods (including fixtures), instruments, money, ~~tangible~~-negotiable tangible documents, and tangible chattel paper. Compare former Section 9-103(1), which applied the law of the location of the collateral to documents, instruments, and “ordinary” (as opposed to “mobile”) goods. This Article does not distinguish among types of goods. The ordinary/mobile goods distinction appears to address concerns about where to file and search, rather than concerns about priority. There is no reason to preserve this distinction under the bifurcated approach.

\* \* \*

**8. Non-U.S. Debtors.** This Article applies the same choice-of-law rules to all debtors, foreign and domestic. For example, it adopts the bifurcated approach for determining the law applicable to security interests in goods and other tangible collateral. See Comment 5.a., above. The Article contains a new rule specifying the location of non-U.S. debtors for purposes of this Part. The rule appears in Section 9-307 and is explained in the Comments to that section. ~~Former Pre-1998~~ Section 9-103(3)(c), which contained a special choice-of-law rule governing security interests created by debtors located in a non-U.S. jurisdiction, proved unsatisfactory and was deleted. *Amendment approved by the Permanent Editorial Board for Uniform Commercial Code December 31, 2001.*

**Section 9-307. Location of Debtor**

\* \* \*

**Official Comment**

\* \* \*

**5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. \* \* \***

~~Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).~~

\* \* \*

**Section 9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection**

\* \* \*

**Official Comment**

\* \* \*

4. **Continuous Perfection.** The following example illustrates the operation of subsection (c):

**Example 1:** Debtor, an importer, creates a security interest in goods that it imports and the documents of title that cover the goods. The secured party, Bank, takes possession of a ~~tangible~~-negotiable tangible bill of lading covering certain imported goods and thereby perfects its security interest in the bill of lading and the goods. See Sections 9-313(a), 9-312(c)(1). Bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and selling them. Under Section 9-312(f), Bank continues to have a perfected security interest in the document and goods for 20 days. Bank files a financing statement covering the collateral before the expiration of the 20-day period. Its security interest now continues perfected for as long as the filing is good.

\* \* \*

**Section 9-311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties**

\* \* \*

**Official Comment**

\* \* \*

2. **Federal Statutes, Regulations, and Treaties.** \* \* \*

An example of the type of federal statute referred to in subsection (a)(1) is 49 U.S.C. §§ 44107-11, for civil aircraft of the United States. The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds but does not establish a national filing system and therefore is not within the scope of subsection (a)(1). An assignee of a claim against the United States may benefit from compliance with the Assignment of Claims Act. But regardless of whether the assignee complies with that Act, the assignee must file under this Article in order to perfect its security interest against creditors and transferees of its assignor.

\* \* \*

**Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-Of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession**

\* \* \*

**Official Comment**

\* \* \*

**3. Chattel Paper; Negotiable Documents.** \* \* \*

Negotiable documents may be, and usually are, delivered to the secured party. See Article 1, Section ~~1-201~~[1-201\(b\)\(15\)](#) (definition of “delivery”). The secured party’s taking possession of a tangible document or control of an electronic document will suffice as a perfection step. See Sections 9-313(a), 9-314 and 7-106. However, as is the case with chattel paper, a security interest in a negotiable document may be perfected by filing.

\* \* \*

10. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

**Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest without Filing**

\* \* \*

**Official Comment**

\* \* \*

10. **“Signs” and “Signed” Replaces “Authenticates” and “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate terms “signs” and “signed” replace the references to “authenticates” and “authenticated” in the pre-2022 text of this section.

\* \* \*

**Section 9-317. Interests That Take Priority over or Take Free of Security Interest or Agricultural Lien**

\* \* \*

**Official Comment**

\* \* \*

**6. Purchasers Other Than Secured Parties.** Subsections (b), (c), (d), and (f) through (i) afford priority over an unperfected security interest to certain buyers (other than secured parties) of collateral. They derive from pre-1998 Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Pre-1998 Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are “subordinate” to the rights of certain purchasers. But, as pre-1998 Comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, these subsections now use the phrase “takes free.”

\* \* \*

**Section 9-318. No Interest Retained in Right to Payment That Is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers**

\* \* \*

**Official Comment**

\* \* \*

**2. Sellers of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes.** Section 1-201(b)(35) defines “security interest” to include the interest of a buyer of accounts, chattel paper, payment intangibles, or promissory notes. See also Section 9-109(a) and Comment 5. Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a “security interest” does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former Article 9. Neither this Article nor the definition of “security interest” in Section ~~1-201~~1-201(b)(35) provides rules for distinguishing sales transactions from those that create a security interest securing an obligation.

\* \* \*

## Section 9-320. Buyer of Goods

\* \* \*

### Official Comment

\* \* \*

3. **Buyers in Ordinary Course.** Subsection (a) derives from former Section 9-307(1). The definition of “buyer in ordinary course of business” in Section ~~1-201~~[1-201\(b\)\(9\)](#) restricts its application to buyers “from a person, other than a pawnbroker, in the business of selling goods of that kind.” Thus subsection (a) applies primarily to inventory collateral. The subsection further excludes from its operation buyers of “farm products”(defined in Section 9-102) from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys goods “in good faith, without knowledge that the sale violates the rights of another person and in the ordinary course.” Subsection (a) provides that such a buyer takes free of a security interest, even though perfected, and even though the buyer knows the security interest exists. Reading the definition together with the rule of law results in the buyer’s taking free if the buyer merely knows that a security interest covers the goods but taking subject if the buyer knows, in addition, that the sale violates a term in an agreement with the secured party.

\* \* \*

### 5. Buyers of Consumer Goods. \* \* \*

As to ~~purchase-money security~~[purchase-money security](#) interests which are perfected without filing under Section 9-309(1): A secured party may file a financing statement, although filing is not required for perfection. If the secured party does file, all buyers take subject to the security interest. If the secured party does not file, a buyer who meets the qualifications stated in the preceding paragraph takes free of the security interest.

\* \* \*

6. **Authorized Dispositions.** The limitations that subsections (a) and (b) impose on the persons who may take free of a security interest apply of course only to unauthorized sales by the debtor. If the secured party authorized the sale in an express agreement or otherwise, the buyer takes free under Section 9-315(a) without regard to the limitations of this section. (That section also states the right of a secured party to the proceeds of a sale, authorized or unauthorized.) Moreover, the buyer also takes free if the secured party waived or otherwise is precluded from asserting its security interest against the buyer. See Section ~~1-103~~[1-103\(b\)](#).

\* \* \*

## Section 9-322. Priorities among Conflicting Security Interests in and Agricultural Liens on Same Collateral

\* \* \*

### Official Comment

\* \* \*

#### 4. Competing Perfected Security Interests. \* \* \*

**Example 3:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a ~~tangible~~-negotiable tangible document in the debtor's possession under Section 9-312(e). On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 10, A files. A has priority, even after the 20-day period expires, regardless of whether A knows of B's security interest when A files. A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period. However, the perfection of A's security interest extends only "to the extent it arises for new value given." To the extent A's security interest secures advances made by A beyond the 20-day period, its security interest would be subordinate to B's, inasmuch as B was the first to file.

\* \* \*

## Section 9-323. Future Advances

\* \* \*

### Official Comment

\* \* \*

#### 3. Competing Security Interests. \* \* \*

**Example 2:** On October 1, A acquires a temporarily perfected (20-day) security interest, unfiled, in a ~~tangible~~-negotiable tangible document in the debtor's possession under Section 9-312(e) or (f). The security interest secures an advance made on that day as well as future advances. On October 5, B files and thereby perfects a security interest that previously had attached to the same document. On October 8, A makes an additional advance. On October 10, A files. Under Section 9-322(a)(1), because A was the first to perfect and maintained continuous perfection or filing since the start of the 20-day period, A has priority, even after the 20-day period expires. See Section 9-322, Comment 4, Example 3. However, under this section, for purposes of Section 9-322(a)(1), to the

extent A's security interest secures the October 8 advance, the security interest was perfected on October 8. Inasmuch as B perfected on October 5, B has priority over the October 8 advance.

\* \* \*

### **Section 9-324. Priority of Purchase-Money Security Interests**

\* \* \*

#### **Official Comment**

\* \* \*

14. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(35\)](#), the cognate term “signed” replaces the references to “authenticated” in the pre-2022 text of this section.

### **Section 9-328. Priority of Security Interests in Investment Property**

\* \* \*

#### **Official Comment**

\* \* \*

8. **Relation to Other Law.** Section ~~1-103~~[1-103\(b\)](#) provides that “unless displaced by particular provisions of [\[the Uniform Commercial Code\]](#)~~this Act~~, the principles of law and equity . . . ~~shall~~ supplement its provisions.” There may be circumstances in which a secured party’s action in acquiring a security interest that has priority under this section constitutes conduct that is wrongful under other law. Though the possibility of such resort to other law may provide an appropriate “escape valve” for cases of egregious conduct, care must be taken to ensure that this does not impair the certainty and predictability of the priority rules. Whether a court may appropriately look to other law to impose liability upon or estop a secured party from asserting its Article 9 priority depends on an assessment of the secured party’s conduct under the standards established by such other law as well as a determination of whether the particular application of such other law is displaced by the UCC.

\* \* \*

### **Section 9-330. Priority of Purchaser of Chattel Paper or Instrument**

\* \* \*

## Official Comment

\* \* \*

7. **Instruments.** Subsection (d) contains a special priority rule for instruments. Under this subsection, a purchaser of an instrument has priority over a security interest perfected by a method other than possession (e.g., by filing, temporarily under Section 9-312(e) or (g), as proceeds under Section 9-315(d), or automatically upon attachment under Section 9-309(4) if the security interest arises out of a sale of the instrument) if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party. Generally, to the extent subsection (d) conflicts with Section 3-306, subsection (d) governs. See Section 3-102(b). For example, notice of a conflicting security interest precludes a purchaser from becoming a holder in due course under Section 3-302 and thereby taking free of all claims to the instrument under Section 3-306. However, a purchaser who takes even with knowledge of the security interest qualifies for priority under subsection (d) if it takes without knowledge that the purchase violates the rights of the holder of the security interest. Likewise, a purchaser qualifies for priority under subsection (d) if it takes for “value” as defined in Section ~~1-201~~1-204, even if it does not take for “value” as defined in Section 3-303.

\* \* \*

### **Section 9-331. Priority of Rights of Purchasers of Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Documents, Instruments, and Securities under Other Articles; Priority of Interests in Financial Assets and Security Entitlements and Protection against Assertion of Claim under Articles 8 and 12**

\* \* \*

## Official Comment

\* \* \*

The state-law Uniform Electronic Transactions Act (UETA) and the federal Electronic Signature in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq.* (E-SIGN), provide certain rules for records referred to and defined as “transferable records.” See UETA Section 16 and E-SIGN, 15 U.S.C. § 7021. When certain conditions have been met, those acts confer on a person the status of a “holder” (as defined in 1-201(b)(21), ~~formerly Section 1-201(20)~~) of an “equivalent record” under pre-1998 Section 9-308 (now, in part, Section 9-330) and the rights and defenses of a “purchaser” under that section, among other effects. E-SIGN also refers to the rights and defenses of a purchaser under Section 9-330. As a matter of the application of the Uniform Commercial Code, those are not the only sections of the Uniform Commercial Code that would logically be affected by UETA and E-SIGN. For example, the rights of a holder in



due course under Section 9-331(a) would also be covered by the application of those acts, when the conditions for applicability have been satisfied.

\* \* \*

#### **5. Collections by Junior Secured Party. \* \* \***

Consider, for example, a junior secured party in the business of financing or buying accounts who fails to undertake a search to determine the existence of prior security interests. Because a search, under the usages of trade of that business, would enable it to know or learn upon reasonable inquiry that collecting the accounts violated the rights of a senior secured party, the junior may fail to meet the good-faith standard. See *Utility Contractors Financial Services, Inc. v. Amsouth Bank*, ~~NA~~, 985 F.2d 1554 (11th Cir. 1993). Likewise, a junior secured party who collects accounts when it knows or should know under the particular circumstances that doing so would violate the rights of a senior secured party, because the debtor had agreed not to grant a junior security interest in, or sell, the accounts, may not meet the good-faith test. Thus, if a junior secured party conducted or should have conducted a search and a financing statement filed on behalf of the senior secured party states such a restriction, the junior's collection would not meet the good-faith standard. On the other hand, if there was a course of performance between the senior secured party and the debtor which placed no such restrictions on the debtor and allowed the debtor to collect and use the proceeds without any restrictions, the junior secured party may then satisfy the requirements for being a holder in due course. This would be more likely in those circumstances where the junior secured party was providing additional financing to the debtor on an on-going basis by lending against or buying the accounts and had no notice of any restrictions against doing so. Generally, the senior secured party would not be prejudiced because the practical effect of such payment to the junior secured party is little different than if the debtor itself had made the collections and subsequently paid the secured party from the debtor's general funds. Absent collusion, the junior secured party would take the funds free of the senior security interests. See Section 9-332. In contrast, the senior secured party is likely to be prejudiced if the debtor is going out of business and the junior secured party collects the accounts by notifying the account debtors to make payments directly to the junior. Those collections may not be consistent with "reasonable commercial standards of fair dealing."

Whether the junior secured party qualifies as a holder in due course is fact-sensitive and should be decided on a case-by-case basis in the light of those circumstances. Decisions such as *Financial Management Mgmt. Services Inc. v. Familian*, 905 P.2d 506 (Ariz. App. Div. 1995) (finding holder in due course status) could be determined differently under this application of the good-faith requirement.

\* \* \*

#### **Section 9-334. Priority of Security Interests in Fixtures and Crops**

\* \* \*

## Official Comment

\* \* \*

13. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

\* \* \*

### Section 9-341. Bank’s Rights and Duties with Respect to Deposit Account

\* \* \*

## Official Comment

\* \* \*

6. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

### Section 9-403. Agreement Not to Assert Defenses against Assignee

\* \* \*

## Official Comment

\* \* \*

### 6. Relationship to Other Law. \* \* \*

This section does not displace other law that gives effect to a non-consumer account debtor’s agreement not to assert defenses against an assignee, even if the agreement would not qualify under subsection (b). See subsection (f). It validates, but does not invalidate, agreements made by a non-consumer account debtor. This section also does not displace other law to the extent that the other law permits an assignee, who takes an assignment with notice of a claim of a property or possessory right, a defense, or a claim in recoupment, to enforce an account debtor’s agreement not to assert claims and defenses against the assignor (e.g., a “hell-or-high-water” agreement). See Comment 4. It also does not displace an assignee’s right to assert that an

account debtor is estopped from asserting a claim or defense. Nor does this section displace other law with respect to waivers of potential future claims and defenses that are the subject of an agreement between the account debtor and the assignee. Finally, it does not displace Section ~~1-107~~[1-306](#), concerning waiver of a breach that allegedly already has occurred.

**Section 9-404. Rights Acquired by Assignee; Claims and Defenses against Assignee**

\* \* \*

**Official Comment**

\* \* \*

6. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

**Section 9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective**

\* \* \*

**Official Comment**

\* \* \*

12. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

**Section 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective**

\* \* \*

**Official Comment**

\* \* \*

11. [Applicability to Promissory Notes](#). Subsection (g) ensures that this section applies to a negotiable instrument that would be a promissory note but for (i) the exclusion of writings that evidence chattel paper from the definition of “instrument” (Section 9-102(a)(47), as revised in 2022) and (ii) the definition of “promissory note” (Section 9-102(a)(65)) as a subset of “instrument.” See Section 9-406, Comment 5.

### **Section 9-505. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions**

\* \* \*

#### **Official Comment**

\* \* \*

#### **3. Changes from Former Section 9-408. \* \* \***

As did former Section 1-201, ~~former~~[pre-1998](#) Article 9 referred to transactions, including leases and consignments, “intended as security.” This misleading phrase created the erroneous impression that the parties to a transaction can dictate how the law will classify it (e.g., as a bailment or as a security interest) and thus affect the rights of third parties. This Article deletes the phrase wherever it appears. Subsection (b) expresses the principle more precisely by referring to a security interest that “secures an obligation.”

\* \* \*

### **Section 9-506. Effect of Errors or Omissions**

\* \* \*

#### **Official Comment**

1. **Source.** Former Section 9-402(8).

2. **Errors and Omissions.** \* \* \*

In addition to requiring the debtor’s name and an indication of the collateral, Section 9-502(a) requires a financing statement to provide the name of the secured party or a representative of the secured party. Inasmuch as searches are not conducted under the secured party’s name, and no filing is needed to continue the perfected status of security interest after it is assigned, an error in the name of the secured party or its representative will not be seriously misleading. However, in an appropriate case, an error of this kind may give

rise to an estoppel in favor of a particular holder of a conflicting claim to the collateral. See Section ~~1-103~~[1-103\(b\)](#).

\* \* \*

## Section 9-507. Effect of Certain Events on Effectiveness of Financing Statement

\* \* \*

### Official Comment

\* \* \*

#### 3. Post-Filing Disposition of Collateral. \* \* \*

**Example 1:** Dee Corp. is an Illinois corporation. It creates a security interest in its equipment in favor of Secured Party. Secured Party files a proper financing statement in Illinois. Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania corporation, subject to the security interest. The security interest continues, see Section 9-315(a), and remains perfected, see Section 9-507(a), notwithstanding that the financing statement is filed under “D” (for Dee Corp.) and not under “B.” However, because Bee Corp. is located in Pennsylvania and not Illinois, see Section 9-307, unless Secured Party perfects under Pennsylvania law within one year after the transfer, its security interest will become unperfected and will be deemed to have been unperfected against purchasers of the collateral. See Section 9-316.

#### 4. Other Post-Filing Changes. \* \* \*

**Example 12:** Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor’s California driver’s license, “James McGinty.” Debtor obtains a court order changing his name to “Roger McGuinn” but does not change his driver’s license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

\* \* \*

**Example 23:** The facts are as in Example 12. Debtor’s driver’s license expires one year after the entry of the court order changing Debtor’s name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-503(a) is the individual name of the debtor or the debtor’s surname and first personal name. The name “James McGinty” has become insufficient.

**Example 34:** The facts are as in Example 12. Before the license expires, Debtor renews the license. The name indicated on the new license is “Roger McGuinn.” Upon issuance of the new license, “James McGinty” becomes insufficient as the debtor’s name under Section 9-503(a).

\* \* \*

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor’s “correct” name, using the filing office’s standard search logic. See Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a “correct name” for these purposes. Thus, assuming that a search of the records of the California filing office under “Roger McGuinn,” using the filing office’s standard search logic, would not disclose a financing statement naming “James McGinty,” the financing statement in Examples 23 and 34 has become seriously misleading and Section 9-507(c) applies.

\* \* \*

### **Section 9-509. Persons Entitled to File a Record**

\* \* \*

#### **Official Comment**

\* \* \*

#### **9. “Signed” and “Signing” Replace “Authenticated” and “Authenticating.”**

Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate terms “signed” and “signing” replace the references to “authenticated” and “authenticating” in the pre-2022 text of this section.

### **Section 9-513. Termination Statement**

\* \* \*

#### **Official Comment**

\* \* \*

6. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the references to “authenticated” in the pre-2022 text of this section.

### **Section 9-516. What Constitutes Filing; Effectiveness of Filing**

\* \* \*

#### **Official Comment**

\* \* \*

6. **Uncertainty Concerning Individual Debtor’s Surname.** Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor’s surname (e.g., it is unclear whether the debtor’s ~~name~~-surname is Elton or John).

\* \* \*

### **Section 9-601. Rights after Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes**

\* \* \*

#### **Official Comment**

\* \* \*

2. **Enforcement: In General.** The rights of a secured party to enforce its security interest in collateral after the debtor’s default are an important feature of a secured transaction. (Note that the term “rights,” as defined in Section ~~1-201~~[1-201\(b\)\(34\)](#), includes ~~“remedies.”~~[“a “remedy.”](#)) This Part provides those rights as well as certain limitations on their exercise for the protection of the defaulting debtor, other creditors, and other affected persons. However, subsections (a) and (d) make clear that the rights provided in this Part do not exclude other rights provided by agreement.

3. **When Remedies Arise.** Under subsection (a) the secured party’s rights arise “[a]fter default.” As did former Section 9-501, this Article leaves to the agreement of the parties the circumstances giving rise to a default. This Article does not determine whether a secured party’s post-default conduct can constitute a waiver of default in the face of an agreement stating that such conduct shall not constitute a waiver. Rather, it continues to leave to the parties’ agreement, as supplemented by law other than this Article, the determination whether a default has occurred or has been waived. See Section ~~1-103~~[1-103\(b\)](#).

\* \* \*

## Section 9-602. Waiver and Variance of Rights and Duties

\* \* \*

### Official Comment

\* \* \*

2. **Waiver: In General.** Section ~~1-102(3)~~[1-302](#) addresses which provisions of the UCC are mandatory and which may be varied by agreement. With exceptions relating to good faith, diligence, reasonableness, and care, immediate parties, as between themselves, may vary its provisions by agreement. However, in the context of rights and duties after default, our legal system traditionally has looked with suspicion on agreements that limit the debtor's rights and free the secured party of its duties. As stated in former Section 9-501, Comment 4, "no mortgage clause has ever been allowed to clog the equity of redemption." The context of default offers great opportunity for overreaching. The suspicious attitudes of the courts have been grounded in common sense. This section, like former Section 9-501(3), codifies this long-standing and deeply rooted attitude. The specified rights of the debtor and duties of the secured party may not be waived or varied except as stated. Provisions that are not specified in this section are subject to the general rules in Section ~~1-102(3)~~[1-302\(a\)](#).

\* \* \*

5. **Certain Post-Default Waivers.** Section 9-624 permits post-default waivers in limited circumstances. These waivers must be made in agreements that are signed. Under Section ~~1-201~~[1-201\(b\)\(3\)](#), an "agreement" means the bargain of the parties in fact." In considering waivers under Section 9-624 and analogous agreements in other contexts, courts should carefully scrutinize putative agreements that appear in records that also address many additional or unrelated matters.

## Section 9-607. Collection and Enforcement by Secured Party

\* \* \*

### Official Comment

\* \* \*

5. **Collections by Junior Secured Party.** A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this section, even if the



security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d), as a holder in due course of an instrument under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a) or (c). See Sections 9-330, Comment 7; 9-331, Comment 5; and 9-332.

\* \* \*

### **Section 9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus**

\* \* \*

#### **Official Comment**

\* \* \*

6. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~1-201(b)(37), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

### **Section 9-610. Disposition of Collateral after Default**

\* \* \*

#### **Official Comment**

\* \* \*

3. **Time of Disposition.** This Article does not specify a period within which a secured party must dispose of collateral. This is consistent with this Article's policy to encourage private dispositions through regular commercial channels. It may, for example, be prudent not to dispose of goods when the market has collapsed. Or, it might be more appropriate to sell a large inventory in parcels over a period of time instead of in bulk. Of course, under subsection (b) every aspect of a disposition of collateral must be commercially reasonable. This requirement explicitly includes the “method, manner, time, place and other terms.” For example, if a secured party does not proceed under Section 9-620 and holds collateral for a long period of time without disposing of it, and if there is no good reason for not making a prompt disposition, the secured party may be determined not to have acted in a “commercially reasonable” manner. See also Section ~~1-203~~1-304 (general obligation of good faith).

\* \* \*

## 5. Disposition by Junior Secured Party. \* \* \*

When a secured party's collateral is encumbered by another security interest or other lien, one of the claimants may seek to invoke the equitable doctrine of marshaling. As explained by the Supreme Court, that doctrine "rests upon the principle that a creditor having two funds to satisfy his debt, may not by his application of them to his demand, defeat another creditor, who may resort to only one of the funds." *Meyer v. United States*, 375 U.S. 233, 236 (1963), quoting *Sowell v. Federal Reserve Bank*, 268 U.S. 449, 456-57 (1925). The purpose of the doctrine is "to prevent the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Id.* at 237. Because it is an equitable doctrine, marshaling "is applied only when it can be equitably fashioned as to all of the parties" having an interest in the property. *Id.* This Article leaves courts free to determine whether marshaling is appropriate in any given case. See Section ~~1-103~~[1-103\(b\)](#).

\* \* \*

**7. Public vs. Private Dispositions.** This Part maintains two distinctions between "public" and other dispositions: (i) the secured party may buy at the former, but normally not at the latter (Section 9-610(c)), and (ii) the debtor is entitled to notification of "the time and place of a public disposition" and notification of "the time after which" a private disposition or other intended disposition is to be made (Section 9-613(a)(1)(E)). It does not retain the distinction under former Section 9-504(4), under which transferees in a noncomplying public disposition could lose protection more easily than transferees in other noncomplying dispositions. Instead, Section 9-617(b) adopts a unitary standard. Although the term is not defined, as used in this Article, a "public disposition" is one at which the price is determined after the public has had a meaningful opportunity for competitive bidding. "Meaningful opportunity" is meant to imply that some form of advertisement or public notice must precede the sale (or other disposition) and that the public must have access to the sale (disposition).

\* \* \*

## Section 9-611. Notification before Disposition of Collateral

\* \* \*

### Official Comment

\* \* \*

**5. Signature Requirement.** Subsections (b), (c), and (e) explicitly provide that notifications must be "signed." Some cases read pre-1998 Section 9-504(3) as validating oral notification. Consistent with the revised definition of "sign" in Section ~~1-201~~[1-201\(b\)\(37\)](#), the

cognate term “signed” replaces the references to “authenticated” in the pre-2022 text of this section.

\* \* \*

**Section 9-613. Contents and Form of Notification before Disposition of Collateral: General.**

\* \* \*

**Official Comment**

\* \* \*

**2. Contents of Notification.** To comply with the “reasonable signed notification” requirement of Section 9-611(b), the contents of a notification must be reasonable. Except in a consumer-goods transaction, the contents of a notification that includes the information set forth in paragraph (a)(1) are sufficient as a matter of law, unless the parties agree otherwise. (The reference to “time” of disposition means here, as it did in former Section 9-504(3), not only the hour of the day but also the date.) Although a secured party may choose to include additional information concerning the transaction or the debtor’s rights and obligations, no additional information is required unless the parties agree otherwise. A notification that lacks some of the information set forth in paragraph (a)(1) nevertheless may be sufficient if found to be reasonable by the trier of fact, under paragraph (a)(2). A properly completed sample form of notification in paragraph (a)(5) or in Section 9-614(a)(3) is an example of a notification that would contain the information set forth in paragraph (a)(1). Under paragraph (a)(4), however, no particular phrasing of the notification is required.

This section applies to a notification of a public disposition conducted electronically. A notification of an electronic disposition satisfies subparagraph (a)(1)(E) if it states the time when the disposition is scheduled to begin and states the electronic location. For example, under the technology current in 2010, the Uniform Resource Locator (URL) or other Internet address where the site of the public disposition can be accessed suffices as an electronic location.

**3. [Style Changes in Safe-Harbor Form and Medium Neutrality]** No change in substance is intended by the changes in style to the form provided in paragraph (5) of the pre-2022 text of this section. However, the presentation and explanation of how to use the form has been simplified and clarified.

**Section 9-614. Contents and Form of Notification before Disposition of Collateral: Consumer-goods Transaction**

\* \* \*

## Official Comment

\* \* \*

2. **Notification in Consumer-goods Transactions.** Paragraph (a)(1) sets forth the information required for a reasonable notification in a consumer-goods transaction. A notification that lacks any of the information set forth in paragraph (a)(1) is insufficient as a matter of law. Compare Section 9-613(a)(2), under which the trier of fact may find a notification to be sufficient even if it lacks some information listed in paragraph (a)(1) of that section.

3. **Safe-Harbor Form of Notification; Errors in Information.** Although paragraph (a)(2) provides that a particular phrasing of a notification is not required, paragraph (a)(3) specifies a safe-harbor form that, when properly completed, satisfies paragraph (1). Paragraphs (a)(4), (5), and (6) contain special rules applicable to erroneous and additional information. Under paragraph (a)(4), a notification in the safe-harbor form specified in paragraph (a)(3) is not rendered insufficient if it contains additional information at the end of the form. Paragraph (a)(5) provides that non-misleading errors in information contained in a notification are permitted if the safe-harbor form is used *and if the errors are in information not required by paragraph (a)(1)*. Finally, if a notification is in a form other than the paragraph (a)(3) safe-harbor form, other law determines the effect of including in the notification information other than that required by paragraph (a)(1).

\* \* \*

## Section 9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus

\* \* \*

## Official Comment

\* \* \*

8. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~1-201(b)(37), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

## Section 9-616. Explanation of Calculation of Surplus or Deficiency

\* \* \*

## Official Comment

\* \* \*

5. **“Signed” Replaces “Authenticated”; Medium Neutrality.** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section. In furtherance of medium neutrality, the reference in the pre-2022 text of this section to a “written demand” has been replaced by a reference to a “demand in a record” and the reference to a “writing” has been replaced by a reference to a “record.”

## **Section 9-617. Rights of Transferee of Collateral**

\* \* \*

### **Official Comment**

\* \* \*

2. **Title Taken by Good-Faith Transferee.** Subsection (a) sets forth the rights acquired by persons who qualify under subsection (b) – transferees who act in good faith. Such a person is a “transferee,” inasmuch as a buyer at a foreclosure sale does not meet the definition of “purchaser” in Section ~~1-201~~[1-201\(b\)\(29\) and \(30\)](#) (the transfer is not, vis-a-vis the debtor, “voluntary”). By virtue of the expanded definition of the term “debtor” in Section 9-102[\(a\)\(28\)](#), subsection (a) makes clear that the ownership interest of a person who bought the collateral subject to the security interest is terminated by a subsequent disposition under this Part. Such a person is a debtor under this Article. Under former Article 9, the result arguably was the same, but the statute was less clear. Under subsection (a), a disposition normally discharges the security interest being foreclosed and any subordinate security interests and other liens.

\* \* \*

## **Section 9-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral**

\* \* \*

### **Official Comment**

\* \* \*

11. **Role of Good Faith.** Section 1-304 imposes an obligation of good faith on a secured party’s enforcement under this Article. This obligation may not be disclaimed by agreement. See Section ~~1-302~~[1-302\(b\)](#). Thus, a proposal and acceptance made under this section in bad faith would not be effective. For example, a secured party’s proposal to accept marketable securities

worth \$1,000 in full satisfaction of indebtedness in the amount of \$100, made in the hopes that the debtor might inadvertently fail to object, would be made in bad faith. On the other hand, in the normal case proposals and acceptances should be not second-guessed on the basis of the “value” of the collateral involved. Disputes about valuation or even a clear excess of collateral value over the amount of obligations satisfied do not necessarily demonstrate the absence of good faith.

\* \* \*

13. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the references to “authenticated” in the pre-2022 text of this section.

### **Section 9-621. Notification of Proposal to Accept Collateral**

\* \* \*

#### **Official Comment**

\* \* \*

3. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the reference to “authenticated” in the pre-2022 text of this section.

### **Section 9-624. Waiver**

\* \* \*

#### **Official Comment**

\* \* \*

3. **“Signed” Replaces “Authenticated.”** Consistent with the revised definition of “sign” in Section ~~1-201~~[1-201\(b\)\(37\)](#), the cognate term “signed” replaces the references to “authenticated” in the pre-2022 text of this section.

### **Section 9-625. Remedies for Secured Party’s Failure to Comply with Article**

\* \* \*

#### **Official Comment**

\* \* \*

**2. Remedies for Noncompliance; Scope.** Subsections (a) and (b) provide the basic remedies afforded to those aggrieved by a secured party's failure to comply with this Article. Like all provisions that create liability, they are subject to Section 9-628, which should be read in conjunction with Section 9-605. The principal limitations under this Part on a secured party's right to enforce its security interest against collateral are the requirements that it proceed in good faith (Section ~~1-203~~1-304), in a commercially reasonable manner (Sections 9-607 and 9-610), and, in most cases, with reasonable notification (Sections 9-611 through 9-614). Following former Section 9-507, under subsection (a) an aggrieved person may seek injunctive relief, and under subsection (b) the person may recover damages for losses caused by noncompliance. Unlike former Section 9-507, however, subsections (a) and (b) are not limited to noncompliance with provisions of this Part of Article 9. Rather, they apply to noncompliance with any provision of this Article. The change makes this section applicable to noncompliance with Sections 9-207 (duties of secured party in possession of collateral), 9-208 (duties of secured party having control over deposit account), 9-209 (duties of secured party if account debtor has been notified of an assignment), 9-210 (duty to comply with request for accounting, etc.), 9-509(a) (duty to refrain from filing unauthorized financing statement), and 9-513(a) or (c) (duty to provide termination statement). Subsection (a) also modifies the first sentence of former Section 9-507(1) by adding the references to "collection" and "enforcement." Subsection (c)(2), which gives a minimum damage recovery in consumer-goods transactions, applies only to noncompliance with the provisions of this Part.

Subsection (a) displaces other state law governing availability of the types of relief addressed in that subsection to the extent that the other state law would preclude the availability of injunctive relief in an otherwise appropriate case solely because the aggrieved party would be able to obtain a collectible money judgment for noncompliance with the rules of this Article. Rather, under subsection (a), in an appropriate case the aggrieved party should be able to obtain relief of the sort described in that subsection even if it would be possible for the aggrieved party to obtain such a judgment. See PEB Commentary No. 27, dated December 16, 2022, discussing the issue in the context of a noncomplying disposition under Section 9-610. The Commentary is available at <https://www.ali.org/peb-ucc>.

**3. Damages for Noncompliance with This Article. \* \* \***

Damages for violation of the requirements of this Article, including Section 9-609, are those reasonably calculated to put an eligible claimant in the position that it would have occupied had no violation occurred. See Section ~~1-106~~1-305(a). Subsection (b) supports the recovery of actual damages for committing a breach of the peace in violation of Section 9-609, and principles of tort law supplement this subsection. See Section ~~1-103~~1-103(b). However, to the extent that damages in tort compensate the debtor for the same loss dealt with by this Article, the debtor should be entitled to only one recovery.

\* \* \*

## Section 9-626. Action in Which Deficiency or Surplus Is in Issue

\* \* \*

### Official Comment

\* \* \*

3. **Rebuttable Presumption Rule.** Subsection (a) establishes the rebuttable presumption rule for transactions other than consumer transactions. Under paragraph (a)(1), the secured party need not prove compliance with the relevant provisions of this Part as part of its prima facie case. If, however, the debtor or a secondary obligor raises the issue (in accordance with the forum's rules of pleading and practice), then the secured party bears the burden of proving that the collection, enforcement, disposition, or acceptance complied. In the event the secured party is unable to meet this burden, then paragraph (a)(3) explains how to calculate the deficiency. Under this rebuttable presumption rule, the debtor or obligor is to be credited with the greater of the actual proceeds of the disposition or the proceeds that would have been realized had the secured party complied with the relevant provisions. If a deficiency remains, then the secured party is entitled to recover it. The references to "the secured obligation, expenses, and attorney's fees" in paragraphs (a)(3) and (4) embrace the application rules in Sections 9-608(a) and 9-615(a).

Unless the secured party proves that compliance with the relevant provisions would have yielded a smaller amount, under paragraph (a)(4) the amount that a complying collection, enforcement, or disposition would have yielded is deemed to be equal to the amount of the secured obligation, together with expenses and attorney's fees. Thus, the secured party may not recover any deficiency unless it meets this burden.

\* \* \*

## Section 9-703. Security Interest Perfected before Effective Date

\* \* \*

### Official Comment

\* \* \*

3. **Interpretation of Pre-Effective-Date Security Agreements.** Section 9-102 defines "security agreement" as "an agreement that creates or provides for a security interest." Under Section ~~1-201(3)~~1-201(b)(3), an "agreement" is a "bargain of the parties in fact." If parties to a pre-effective-date security agreement describe the collateral by using a term defined in former Article 9 in one way and defined in this Article in another way, in most cases it should be



presumed that the bargain of the parties contemplated the meaning of the term under former Article 9.

\* \* \*