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THE Uniform Commercial Code was prepared under the auspices of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These organizations have been responsible for much of the uniform legislation in the commercial law area which is in effect today, e.g., Uniform Sales Act, Uniform Conditional Sales Act, Uniform Trust Receipts Act, etc. There are, however, large areas of commercial law which are not yet covered by uniform legislation, e.g., factors liens, accounts receivable financing, chattel mortgages, etc. The code represents an ambitious and commendable effort to pull together most of the phases of the law governing commercial transactions, which are now treated in many separate statutes, into a single statute for the purpose of accomplishing greater uniformity and certainty in our commercial law. Within its compass, the code covers the law of (1) sales, (2) commercial paper, (3) bank deposits and collections, (4) letters of credit, (5) bulk transfers, (6) documents of title, (7) investment securities and (8) chattel secured transactions. It is the culmination of years of study and research in these areas.

At present, the code has been adopted in six states—Pennsylvania, Massachusetts, Kentucky, Connecticut, New Hampshire and Rhode Island. It is under study by interested groups in a number of other states including Michigan, where a special committee of the State Bar has undertaken the task of studying the

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code and making recommendations as to its adoption to members of the association.

Your committee has now completed its study of Article 3 of the code which deals with "commercial paper"—the area now covered by the Negotiable Instruments Law.[1] The following is a summary of the results of this study.

Under the code, negotiable instruments are referred to as "commercial paper." A careful distinction is drawn between such paper and "investment securities," which are securities normally traded on securities markets. This distinction becomes significant in the case of government and corporate bonds which presently are subject to the rigid and often unsatisfactory requirements of the NIL.[2] Under the code, government and corporate bonds would be governed by the provisions of the code relating to investment securities,[3] which are better adopted to the actual use and operation of these instruments in commerce than the provisions of the NIL.

As to the formal requisites of negotiable instruments, the code would make no startling changes in our present law. The code would simply serve to clear up some of the uncertainties which have developed under the NIL as to the effect of references in the instrument to another document executed in the same transaction,[4] of acceleration clauses,[5] etc., on negotiability of the instrument.

The code would make an important contribution in clarifying the operation and effect of restrictive indorsements on negotiable instruments. Under the NIL, a restrictive indorsee cannot acquire status as a holder in due course[6] and it is not clear what obligations a remote holder of the instrument owes to the restrictive indorser. Under the code, one would not be prevented from attaining status as a holder in due course simply because he took under a restrictive indorsement.[7] In the commonest type of restrictive indorsement situation—deposit or collection—the code would make it clear that "intermediary" banks acting as agents in the collection process would not be responsible to the restrictive indorser for improper handling of the proceeds of collection by one of the other agents acting in the collection process.[8] Also, an "intermediary" or "payor" bank would not be liable in conversion solely because the proceeds of a restrictively indorsed item were not paid or applied consistently with the terms of the indorsement.[9]

The qualifications for status as a holder in due course would remain substantially the same under the code. Some slight revision in approach is, however, involved. The present requirement that a holder in due course must take an instrument which is "complete and regular on its face,"[10] would become a problem of "notice" in connection with the requirement of "good faith" under the code. A holder would be on notice of a defense or claim if the instrument was so incomplete or irregular "as to call into question its validity, terms or ownership, or to create an ambiguity as to the party to pay."[11] The present requirement that the holder in due course must take the instrument "before it was overdue"[12] would also become a question of "notice" for purposes of good faith purchase under the code. The holder would be required to take "without notice that it

1. Hereinafter referred to as "NIL."

2. See, for example, *City of Adrian* v. *Whitney Central National Bank*, 180 Mich. 171 (1914); *Paepke* v. *Paine*, 253 Mich. 636 (1931).

3. UCC, Article 8.

4. See, for example, *Ivory* v. *Lamoreaux*, 241 Mich. 226 (1928); *First State Savings Bank* v. *Russell*, 244 Mich. 298 (1928); *Dart National Bank* v. *Burton*, 258 Mich. 283 (1932); *Toledo Scale Co.* v. *Gogo*, 186 Mich. 442 (1915).

5. *First National Bank of Port Huron* v. *Carson*, 60 Mich. 432 (1886).

6. NIL §§37 and 47 (Mich. Comp. Laws, 1948, §§439.39 and 439.49).

7. UCC §3-206.

8. *Ibid.*

9. UCC §3-419(4).

10. NIL §52 (Mich. Comp. Laws, 1948, §439.52).

11. UCC §3-304 (1) (a).

12. NIL §52 (Mich. Comp. Laws, 1948, §439.52).

is overdue." [13] This change would be helpful in cases of innocent purchase of instruments after acceleration of the stated maturity date. The rule as to "stale" demand instruments for purposes of purchase before maturity would remain the same except that the code provides a presumption that a domestic check is "stale" thirty days after issue.[14]

As to the rights of holders in due course, the code would make several minor changes. Under Michigan law, a holder in due course takes subject to the defense of fraud in the execution except where the party signing the instrument was *grossly* negligent.[15] The code would shift the emphasis from gross negligence to ordinary negligence.[16] The NIL draws a distinction between the defense of non-delivery of a complete instrument and of an incomplete instrument. Non-delivery of an incomplete instrument is a good defense against a holder in due course; non-delivery of a complete instrument is not.[17] The code would allow the holder in due course to take free of the defense of non-delivery in any case.[18]

Section 3—307 (1) of the code would replace Michigan court rule 29[19] dealing with the problem of burden of establishing signatures on negotiable instruments. It is not clear whether rule 29 goes to all signatures on the instrument which are not specifically denied in the pleading or only to the signature of the defendant. The code provision expressly covers all signatures on the instrument. The code also goes further than rule 29 by giving claimant the benefit of a prima facie presumption that the signature is genuine even after the signature is challenged except where the claim is against a signer who died or became incompetent before the proof was required.[20]

Unlike the NIL, the code specifically covers the problem of instruments made payable to impostors.[21] It would shift the risk of loss in these situations more definitely on the person drawing such instruments than is presently the case.[22]

The code would make several important changes in the rules relating to altered instruments. The NIL completely "avoids" an altered instrument in the hands of any holder other than a holder in due course.[23] Under the code, an ordinary holder could enforce any contract on the instrument which had not been changed by the alteration. The code thus importantly shifts the emphasis from avoidance of the whole instrument to avoidance only of the particular contract which has actually been altered.[24] Under the NIL, the drastic consequences of alteration follow regardless of whether the alteration is fraudulent.[25] Under the code, the question of whether the alteration was fraudulently made would be material. If fraudulent, only a holder in due course could enforce the altered contract according to its original tenor. If not fraudulent, any holder could enforce the altered contract according to its original tenor.[26] At present, negligence in drawing the instrument in a form which invites alteration does not affect the operation of the rules relating to altered instruments.[27] The code would make such negligence a material fact and, if it was found that the negligence substantially contributed to the altera-

13. UCC §3-302(c).

14. UCC §3-304 (3)(c).

15. *Van Slyke* v. *Rooks,* 181 Mich. 88 (1914).

16. UCC §3-305 (2)(c).

17. NIL §§15 and 16 (Mich. Comp. Laws, 1948, §§439.17 and 439.18).

18. UCC §3-115.

19. Honigman, Michigan Court Rules Annotated 292 (1949). See also, Mich. Comp. Laws (1948) §670.26.

20. See *Hunter* v. *Parsons,* 22 Mich. 95 (1870) and *Matteson* v. *Morris,* 40 Mich. 52 (1879).

21. UCC §3-405.

22. See *Peninsular State Bank* v. *First National Bank,* 245 Mich. 179 at 181 (1928).

23. NIL §124 (Mich. Comp. Laws, 1948, §439.126).

24. UCC §3-407(2).

25. Cf. *Aldrich* v. *Smith,* 37 Mich. 468 (1877) with *Johnson* v. *Johnson Estate,* 66 Mich. 525 (1887).

26. UCC §3-407(2).

27. *Commonwealth Bank* v. *Dunn,* 335 Mich. 665 (1953).

tion, the person drawing it would be estopped to deny liability to a holder in due course on the instrument in its altered form.[28] Under the code, unauthorized completion of an incomplete instrument would constitute material alteration.[29]

The code provides that "no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind." This would change existing Michigan law. For example, if A, who is indebted to B, induces C gratuitously to furnish his (C's) note for use as collateral security for A's debt, C's note is without consideration and cannot be enforced by one not a holder in due course.[30] Under the code, consideration is unnecessary and C's note would be enforceable against him.[31] Also, if A is indebted to B on a note which C is induced to sign gratuitously after delivery of the note to B, C's promise lacks consideration and cannot be enforced against him by one not a holder in due course.[32] Under the code, since C's promise need not be supported by consideration, it would be enforceable against him.[33]

Under the code, the subject of acceptance of drafts would be greatly simplified. Only an acceptance "written on the draft" would be effective.[34] Problems with extrinsic,[35] virtual[36] and constructive acceptances[37] would be eliminated.

As to accommodation parties, section 3-415 of the code would eliminate the present requirement that the accommodation party must sign "without receiving value."[38] The code also makes it clear that an accommodation party cannot assert the defense of lack of consideration against any holder of the instrument.[39] The code further specifically provides that when an accommodation party pays pursuant to his contract, he shall have a right or recourse *on the instrument* against the accommodated party.

The NIL makes no mention of the obligations and rights of a guarantor of a negotiable instrument. This subject is specifically covered in the code[40] in a fashion which is generally in accord with existing Michigan law.[41] The liability of a guarantor of *payment* would be practically indistinguishable from that of a primary party to the instrument. A guarantor of *collection* would be liable only after the holder had reduced his claim to judgment against the primary party and execution was returned unsatisfied.

The subject of warranties of vendors of negotiable instruments is thoroughly reworked by the code to the end of greater clarity and certainty.[42] Vague language now found in the warranty sections of the NIL, e.g., that the "instrument is . . . in all respects what it purports to be," that the "instrument is . . . valid and subsisting," etc., is eliminated. Warranties against forged signatures, altered instruments, defenses, etc., are clearly spelled out.

There has been considerable doubt whether the rule of *Price* v. *Neal*[43] was

28. UCC §3-406.

29. UCC §3-407(1).

30. *Brown* v. *Smedley,* 136 Mich. 65 (1904).

31. UCC §3-408.

32. *Manistee National Bank* v. *Seymour,* 64 Mich. 59 (1887); *Kulenkamp* v. *Groff,* 71 Mich. 675 (1888).

33. UCC §3-408.

34. UCC §3-410.

35. NIL §134 (Mich. Comp. Laws, 1948, §439.136).

36. NIL §135 (Mich. Comp. Laws, 1948, §439.137). *Wilson & Co.* v. *Niffenegger,* 211 Mich. 311 (1920).

37. NIL §137 (Mich. Comp. Laws, 1948, §439.139).

38. NIL §29 (Mich. Comp. Laws, 1948, §439.31).

39. Cf. *Columbia Motor Truck & Trailer Co.* v. *Bamlet,* 227 Mich. 651 (1924); *Krause* v. *Retty,* 254 Mich. 684 (1931).

40. UCC §3-416.

41. *National Security & Trust Co.* v. *Niles Invisible Door Check Co.,* 222 Mich. 510 (1923); *Aldrich* v. *Chubb,* 35 Mich. 350 (1877); *Barman* v. *Carhartt,* 10 Mich. 338 (1862); *Thomas* v. *Dodge,* 8 Mich. 51 (1860).

42. Cf. NIL §§65 and 66 (Mich. Comp. Laws, 1948, §§439.67 and 439.68) with UCC §3-417(2)(3) and (4).

43. 3 Burr. 1354 (1762).

actually codified by the NIL. The code clearly incorporates the rule with little significant change in Michigan law indicated.[44] In cases of mistake in payment involving forged indorsements[45] and altered instruments,[46] the Michigan courts have allowed recovery by the payor on theories of quasi-contract. Under the code, one who presents for payment would warrant that no indorsement necessary to his title had been forged and that the instrument had not been materially altered. The code would thus simply change the theory of payor's recovery from quasi-contract to breach of warranty. This change does not, however, contemplate any reallocation of the risks of loss.

While the code eliminates the concept of constructive acceptance, it does provide that a person to whom an instrument is delivered for acceptance or payment shall be liable in conversion for failure to return the instrument on demand.[47] It protects one who acts in a representative capacity in handling the instrument from a claim for conversion (except for proceeds still in hand) where the representative dealt with the instrument or its proceeds in good faith on behalf of one not the true owner thereof.[48] This would change Michigan law.[49] The code provision that an instrument is converted when it is paid on a forged indorsement, would also change Michigan law.[50]

The provisions of the code relating to presentment, notice of dishonor and protest would greatly simplify and clarify existing law. As to the necessity of presentment and notice of dishonor, the code would work one significant change in Michigan law. Under the NIL, failure to present instruments payable at a bank does not result in discharge of the maker or acceptor.[51] The only effect is that a tender of payment is accomplished if, in fact, the maker or acceptor was willing and able to pay it. Under the code, if the instrument is payable at a bank, failure to present or give notice of dishonor could result in discharge of the maker or acceptor.[52] The code would limit the necessity of protest to situations involving drafts "drawn or payable outside of the states and territories of the United States and the District of Columbia."

Under the NIL, delay in presentment or notice of dishonor results in complete discharge of drawers of drafts and indorsers of any instrument.[53] Delay in presentment results in discharge of drawers of checks only to the extent of the loss caused by the delay.[54] Under the code, any indorser would still be completely discharged by delay in presentment or notice of dishonor.[55] But all other parties as to whom presentment and notice of dishonor are necessary would be discharged only if the delay deprived them of funds maintained to pay the instrument and only if a written assignment of the right to these funds is given to the holder of the instrument.[56] Unlike the NIL, this change properly ties discharge to actual injury suffered by the delay in presentment or notice of dishonor.

As to time for presentment for payment, the code explicitly provides that if the maturity date of an instrument is accelerated, presentment must be made "within a reasonable time after the acceleration."[57] The NIL is silent on this

44. UCC §3-417(1).

45. *Metropolitan Cas. Ins. Co.* v. *First Natl. Bank,* 261 Mich. 450 (1933).

46. *Little* v. *Derby,* 7 Mich. 325 (1859).

47. UCC §3-419(1).

48. UCC §3-419(3).

49. *Kaufman* v. *State Savings Bank,* 151 Mich. 65 (1908).

50. *Gordon Fireworks Co.* v. *Capital National Bank,* 236 Mich. 271 (1926).

51. NIL §70 (Mich. Comp. Laws, 1948, §439.72).

52. UCC §3-501(1).

53. See NIL §70 (Mich. Comp. Laws, 1948, §439.72).

54. NIL §186 (Mich. Comp. Laws, 1948, §439.188).

55. UCC §3-502(1)(a).

56. UCC §3-502(1)(b).

57. UCC §3-503(1)(d).

problem. Presentment as to secondary parties on demand instruments would be required within a reasonable time after the secondary party becomes liable on the instrument.[58] That is, drawers of demand drafts and checks would require presentment within a reasonable time after issue and indorsers of demand instruments would require presentment within a reasonable time after indorsement. The rather unsatisfactory "last negotiation" rule of the NIL would be eliminated.[59] The code creates a presumption with regard to uncertified checks that 30 days after issue is reasonable for presentment as to the drawer and seven days after indorsement is reasonable for presentment as to each indorser.

The methods of presentment now covered by various sections of the NIL[60] are simplified by the provisions of section 3-504 of the code.

Section 3-508 of the code would liberalize the rules as to who can give effective notice of dishonor. It would eliminate present distinctions based on place of residence of the persons involved as to the methods of giving notice of dishonor.

As to protest, the rules as to persons authorized to make protest are liberalized and it would no longer need be made at the place of dishonor.[61] In Michigan, a certificate of protest by a notary public is presumptive evidence of the facts contained therein.[62] However, the presumption can be overcome by verified pleading denying the facts. Under the code, the document of protest would create a presumption of dishonor and notice thereof which could be rebutted only by the introduction of evidence sufficient to support a finding that notice of dishonor had not been given.[63]

Section 3-511 of the code greatly simplifies the present provisions of the NIL relating to waiver and excuse of presentment, notice of dishonor and protest.

On the subject of discharge, the code would make several important changes and clarifications of provisions of the NIL. For example, the NIL provides for discharge of the *instrument*[64] and discharge of *parties* to the instrument.[65] The code provides only for discharge of *parties* to the instrument. However, the liability of *all* parties to an instrument would be discharged in the event of payment or reacquisition of the instrument by one who himself has "no right of action or recourse on the instrument," e.g., the maker of a promissory note.[66] The troublesome term "principal debtor," used without definition in the NIL, is eliminated. The code specifically spells out the effect which the accommodation relationship should have upon problems of discharge of parties to the instrument. Unlike the NIL, the code makes it clear that typical suretyship defenses are available to accommodation makers and acceptors as well to secondary parties.[67] The concept of "payment in due course" is eliminated. The rules as to cancellation and renunciation are clarified.

In conclusion, it seems fair to say that the code does an excellent job of overhauling a statute which has long been in need of revision. After all, the NIL was drafted over 60 years ago. It was adopted in Michigan in 1905. In the half century since its adoption, it has ceased to be a uniform law because of amendments added in many states and differing constructions given to its provisions by the courts of various states. The code could reestablish uniformity.

58. UCC §3-503(1)(e).

59. NIL §71 (Mich. Comp. Laws, 1948, §439.73).

60. NIL §72 (Mich. Comp. Laws, 1948, §439.74); §73 (Mich. Comp. Laws, 1948, §439.75); §77 (Mich. Comp. Laws, 1948, §439.79); §78 (Mich. Comp. Laws, 1948, §439.80); §145 (Mich. Comp. Laws, 1948, §439.147).

61. UCC §3-509.

62. Mich. Comp. Laws, 1948, §55.113.

63. UCC §3-510.

64. NIL §199 (Mich. Comp. Laws, 1948, §439.121).

65. NIL §120 (Mich. Comp. Laws, 1948, §439.122).

66. UCC §3-601.

67. UCC §3-606.