Article 7 of the Uniform Commercial Code

Douglass Boshkoff

Indiana University Maurer School of Law

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The Uniform Commercial Code is now being studied by a special State Bar committee whose chairman, Roy L. Steinheimer, reported on Article 3 of the Code dealing with negotiable instruments. The following is an analysis of Article 7 which covers a somewhat related subject, documents of title.

The most commonly used documents of title are warehouse receipts and bills of lading. Such documents have a three fold function: (1) they serve as receipts for goods deposited with bailees, (2) they are contracts for storage or shipment, and (3) in many cases they represent title to the goods for which they are issued.

Other less common documents are sometimes used, such as delivery orders or dock warrants. The bailees' responsibility for these goods and rights of parties who buy and sell documents of title are covered in two uniform acts, the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act. A third statute, the Uniform Sales Act, contains a few provisions pertinent to the negotiation of documents. All of these statutes, hereafter referred to as the UWRA, UBLA, and USA, have been adopted in Michigan.

Scattered throughout the Michigan statutes, and often secreted in the most unlikely places, are various other relevant acts which were adopted both before and after passage of these three acts. The legislature has not taken great care to repeal obsolete statutes with the result that we now have a mass of statutes which the practitioner in this area must unravel. The present statutory situation is analagous to a hard jig saw puzzle with a few extra pieces.

If I were asked “What difference would adoption of the Code make?” my answer would be that it should greatly
simplify the task of those working in this field. There are two reasons for this: First, most of the law pertaining to documents of title would be grouped under one, easily located, statutory heading. Second, consideration of the Code would compel simultaneous re-evaluation of the present statutes, since not all would necessarily have to be repealed. This latter project, literally a spring cleaning, is long overdue.

Convenience, however, is not the only strong point of Article 7. Over fifty years have passed since the drafting of the UWRA, UBLA, and USA. Changes in commercial theory and various judicial decisions have made clear the need for statutory revision. Even such apparently unrelated events as the advent of the airplane have made an impact. Article 7, like the balance of the Code, takes these changes into consideration and the result is an interesting combination of something old and something new.

Article 7 is divided into six parts. These parts cover definitions and principles of construction, special provisions for warehouse receipts, special provisions for bills of lading, general obligations of bailees, negotiation and transfer, and miscellaneous items, in that order. There are other relevant sections of the Code which appear outside Article 7 but the cross references provided after each separate section are usually adequate. The draftsmen have also provided comments for each section which explain, quite often in great detail, the purpose of the statute and refer to corresponding sections of prior uniform acts.

Definition of Documents. The Code definition of documents of title is so phrased as to incorporate subsequent development of new documents with the hope of avoiding the need for many amendments. The definition is very broad and includes bills of lading issued by contract carriers and freight forwarders.7 Under present Michigan law only a bill of lading issued by a common carrier is subject to the terms of the UBLA.8 A warehouse receipt issued by a cooperative warehouse would also be a document of title under the Code.9 This is a change since the current statute does not recognize such a receipt unless it is issued by a person lawfully storing goods for profit.10

Destination Bills of Lading. The importance of the airplane to the modern commercial world is responsible for one new and novel Code section. Suppose that a manufacturer in Detroit wishes to ship goods to a buyer in the Upper Peninsula. The buyer wants them as soon as possible so the natural course of action is to send them by air. At the same time, the manufacturer wants payment of a sight draft drawn on the buyer accompanied by a negotiable bill of lading covering the goods. If the goods are sent by air and the draft and bill of lading by mail some, if not all, of the advantages of air transport will be lost while the goods await the arrival of the bill of lading.

Under section 7-305 of the Code, this delay may be avoided. Authorization is given the carrier to issue a destination bill at manufacturer's request. Carrier would wire the bill of lading to its agent at destination who would make it out and deliver it to manufacturer's agent. Manufacturer could then wire a draft on buyer to its agent, and the draft and bill of lading could then be presented immediately on arrival of the goods. This section is only permissive, not mandatory, but it gives statutory sanction to a valuable time-saving device.11

Limitations of Liability. Both the UWRA and the UBLA prevent the bailee from escaping responsibility for the

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5. See §§7-103, 7-201 Comment, 10-102, 10-103, 10-104.
6. §§1-201 (6), 7-305.
7. §1-201 (15); cf. §§1-201 (6), (45), 7-102 (1) (d), (e).
8. UBLA §1, C.L. §482.1, M.S.A. §22.1121 (1937).
9. §§1-201 (45), 7-102 (1) (h) and Comment 2.
11. §7-305 Comment.
goods by use of an omnibus disclaimer.\textsuperscript{12} The question then arises as to whether the bailee may refuse to assume full responsibility for goods unless the exact value is declared and a corresponding storage or shipment charge paid. A related question is whether bailees may require injured bailors to present their claims for damage within a certain period shorter than the statute of limitations. Of course, the injured depositor would argue that such provisions are invalid disclaimers of the bailees' statutory duty of care. Generally, legal opinion in Michigan has favored such provisions.\textsuperscript{13} The Code confirms this trend by specifically authorizing a limitation of liability unless a higher charge is paid, and permitting reasonable claim provisions.\textsuperscript{14}

**Definition of Negotiability.** A minor change is that negotiable bearer bills of lading would be recognized.\textsuperscript{15} A major change is the acceptance of a document as negotiable where it runs to a named person or assigns and is treated as negotiable in overseas trade.\textsuperscript{16}

**Due Negotiation.** Under the present Uniform acts, the purchase of negotiable documents is more attractive than transactions in those which are non-negotiable. This is because the purchaser of the former type secures greater protection against defects in the title of his transferor,\textsuperscript{17} To obtain this protection the purchase must be in good faith, for value, and without notice of any defects in the transferor's title.\textsuperscript{18} When the elements of bona fide purchase are present and the document is properly endorsed and delivered, it has been duly negotiated.

The phrase “due negotiation” also appears in the Code and the dichotomy between purchasers of duly negotiated documents and others is maintained.\textsuperscript{19} However, the concept of due negotiation is quite different. It requires not only a document in the proper form for negotiation, and the familiar elements of faith and value, but also a transfer in “the regular course of business or financing” and not involving receipt of “the document in settlement or payment of a money obligation.”\textsuperscript{20}

The reason for this requirement is that documents of title are generally only used by the commercial community. They are an aid to commerce with which the man on the street is little concerned. However, negotiation of a negotiable document may in some cases deprive a person of title to goods, e.g., where a warehouse receipt is stolen and negotiated by a thief. This hazard imposed upon the owner of goods represented by a negotiable document is substantial and should be present only where commercially necessary. Thus due negotiation under the Code can occur only where the transaction and the person transferring the documents are a part of ordinary commercial activity. As one Official Comment quaintly states, “No commercial purpose is served by allowing a tramp or professor to 'duly negotiate' an order bill of lading for hides or cotton not his own . . . .”\textsuperscript{21} Although I may disagree with the placing of professors and tramps in the same category, the principle demonstrated by the example is sound. If due negotiation is not present, the purchaser acquires only the title which his

\textsuperscript{12} UWARA §3, C.L. §443.8, M.S.A. §19.423 (1959); UBLA §3, C.L. §482.3, M.S.A. §22.1123 (1937).


\textsuperscript{14} §§7-204 (2), (3), 7-309 (2), (3).

\textsuperscript{15} §§7-104 (1) (a). cf. UBLA §5, C.L. §482.5, M.S.A. §22.1125 (1937).

\textsuperscript{16} §§7-104 (1) (b).

transferor had or had actual authority to convey. 22

The Bailee's Excuse for Non-Delivery. If the bailee cannot honor a demand for the goods, it will be liable for its failure to deliver unless it can show a valid excuse. Some possible excuses are loss for which the bailee is not responsible or lawful sale to satisfy its lien. Presently, the possible excuses are found in various parts of the UWRA and UBLA. 23 The Code provisions are easier to work with since the several possible excuses are found in two sections. 24 The changes in this area are mostly to clarify the law but one specific excuse, diversion or reconsignement, 25 deserves note.

Suppose that Seller ships goods to Buyer under a non-negotiable bill of lading, naming Buyer as consignee, and, while they are in transit, Buyer instructs carrier to divert them to a third party. At present the carrier may do this unless there are conflicting instructions from Seller, in which case it will escape liability only if it delivers to the person lawfully entitled to them. 26 The practical result in a situation where there are conflicting instructions may be that the carrier will hold on to the goods until a suit between Seller and Buyer resolves the controversy. 27 To avoid this delay, there is a specific Code provision telling the carrier how it may act to avoid liability. In the fact of conflicting instructions it will be protected if it follows the instructions of the consignor on a non-negotiable bill. 28 Of course, where a negotiable bill is involved it must follow the orders of the holder. 29

Termination of Storage. The warehouseman's right to terminate storage has been completely revised in the Code. Under the UWRA there is a single right which depends on (1) the existence of perishable goods, or (2) the possibility of great deterioration in value, or (3) the existence of property which because of odor, leakage, inflammable or explosive nature is likely to injure other goods. 30

The Code goes further than the UWRA in giving the warehouseman a general right to terminate storage, at his option, and irrespective of the quality or condition of the goods, at the end of the storage agreement or on thirty day's notice if there is no definite period. 31 On the other hand the present right to terminate because of the quality or condition of the goods is cut down. In the case of perishable goods, the right to terminate exists only if the warehouseman believes in good faith that they will deteriorate below the amount of the storage lien. 32 Where dangerous goods are involved, the right to terminate exists only if the warehouseman did not know the nature of the goods when they were stored. 33 In the latter two situations the termination procedure is summary in nature. If facts authorizing summary action do not exist then the warehouseman must resort to his general right.

There is no separate provision for termination of storage by carriers. The right exists only after they have begun to hold the goods as warehousemen. 34

The Bailee's Lien. Under the Code, the warehouseman may claim, as against any

22. §7-504 (1).
24. §§7-403 (1), 7-404.
25. §§7-303, 7-403 (1) (e).
26. UBLA §§12 (b), 13, C.L. §§482.12 (b), 13, M.S.A. §§22.1132 (b), 22.1133 (1937).
28. §7-303 (1) (b).
29. §7-303 (1) (a).
30. UWRA §34, C.L. §443.34, M.S.A. §19.454 (1959).
31. §7-206 (1).
32. §7-206 (2).
33. §7-206 (3).
particular item, a specific lien for services related to that item, a general lien for services related to other items of the same depositor, and a security interest for monies advanced to the depositor. The provision for a security interest is new. Article 7 recognizes the possibility of a security interest but its perfection and validity is governed by Article 9 on Secured Transactions.3

Carriers are given only a specific lien36 since it was thought that they would neither need a general lien or security interest. However, the Code provides that they are not prevented from claiming them if state law outside the Code recognizes such interests.37

There has been a revision of the procedure for selling goods to satisfy the specific and general liens. Two methods are available to both warehousemen and carriers.38 One liberal method is available for goods stored by merchants in the ordinary course of their business. Notification must be given to those known to claim an interest in the goods and the sale must be in a commercially reasonable manner. A second procedure, a bit more strict and cumbersome, but more clearly stated than at present,39 is prescribed when storage has been made by anybody other than such a merchant. There is no compulsion to follow the first alternative but it is more attractive and would probably be used whenever possible.

This discussion has touched on a fair sampling of the changes made by the Code in the hope that members of the bar will become acquainted with the general approach its draftsmen have followed. Article 7 represents a commendable modernization of one area of commercial law and deserves careful consideration and evaluation on the part of every lawyer in Michigan.

35. §7-209 (1), (2) and Comments 1 and 2.
36. §7-307.
37. §§7-307 Comment, 7-105.
38. §§7-210, 7-308.

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