

December 2019

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### Recommended Citation

Paul D. Carrington, *The Uniform Commercial Code - Sales, Bulk Sales, and Documents of Title*, 15 Wyo. L.J. 1 (1960)

Available at: <https://scholarship.law.uwyo.edu/wlj/vol15/iss1/1>

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# THE UNIFORM COMMERCIAL CODE — SALES, BULK SALES, AND DOCUMENTS OF TITLE

PAUL D. CARRINGTON\*

## *Article 2—Sales*

This Article of the Uniform Commercial Code is a revision and amplification of the Uniform Sales Act, which was adopted in Wyoming in 1917.<sup>1</sup> The Sales Act was, in its time, a useful piece of legislation, but the merchants, lawyers, and scholars most concerned with it have been dissatisfied for many years. They have expressed two principal criticisms: first, that the Uniform Sales Act left too much unsaid and unsettled and, second, that it was too conceptualistic in approach, requiring that too many problems be solved by reference to metaphysical considerations rather than the justice or practicality of results. Despite the superficial simplicity of the Sales Act, the justice of these criticisms is apparent to all but the most uncritical observers.<sup>2</sup> The Commissioners on Uniform State Laws are therefore justified in making an effort to improve their handiwork.

## *Draftsmanship and Legislative Technique*

The difference in the technique and diction of the Uniform Commercial Code is perhaps best and most importantly exemplified in the eclipse of the presently vital concept of "title to goods." Title is obviously a useful shorthand description of the rights and risks which are conferred upon the person possessing it, but the common law and the Uniform Sales Act have long employed the concept not only as a description, but as a determinant of those rights and risks. This is so despite the obvious artificiality of the concept and the circular analysis which results: risk of loss depends on title and title is (in simple fact) in the party who bears the risk of loss. The Uniform Sales Act did break loose from this verbal prison to declare that passage of title is determined by the intent of the parties and to establish some rules for divining their intent from the terms of their transactions.<sup>3</sup> But these rules are, again, highly artificial in that only a lawyer would ever pause to form an intent as to when title should pass to the buyer of goods. Thus, despite the efforts expended in trying to determine the intent of the parties in accordance with the rules of the Uniform Sales Act, title has remained an elusive spectre. Furthermore, the effort to be consistent, to give title the same meaning in default cases, for instance, that it is given in risk of loss cases, has led to some peculiar and unsatisfactory results. For these reasons, the drafters of the Uniform Commercial Code elected to curtail the significance of title and to provide

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1. WS 34-157 et seq.

2. Professor Williston, who drafted the Uniform Sales Act, was one; but he is not uncritical of the Code. See Williston, *The Law of Sales in the Proposed Uniform Commercial Code*, 63 Harv. L. Rev. 561 (1950).

3. Uniform Sales Act § 19, WS 34-184.

different rules for the different problems heretofore resolved by reference to that concept.<sup>4</sup>

It would perhaps be easy to exaggerate the importance of this change. It should first be observed that title is preserved, without significant change, for the purpose of determining problems not otherwise solved by the Uniform Commercial Code, such as matters of state taxation or trade regulation.<sup>5</sup> Also, it is true that there are not many cases where title has proved an unduly rigid concept. The principal advantage claimed by the drafters of the Uniform Commercial Code is that the same results will be reached with less jousting of windmills; this would be a salutary saving of effort and it would doubtless result from adoption of the Code. The nature and significance of this improvement is typical of the effect of the Uniform Commercial Code on existing sales law; most of the changes, like this one, are technical simplifications of method, intended to ease lawyers and litigants over the rough spots disclosed by a half century of experience with sales legislation.

This same objective is also served by the introduction of a few new concepts; typical of these is a distinction sometimes made on the basis of whether the party involved is a "merchant."<sup>6</sup> This is not an artificial distinction but is based upon a fact of independent significance: the occupation of the seller or buyer. It is also a necessary distinction. It is obvious that considerations of mercantile convenience are of more importance in transactions between merchants and that considerations of fairness are of greater importance in transactions involving a housewife-consumer; some rules, if applied indiscriminately to both classes of transactions, are likely to produce some inconvenience for the merchant or some unfairness to the housewife. Only by making the distinction is it possible to give maximum effect to considerations both of fairness and of practicality. One may surmise that the failure of the existing law to make this distinction has probably caused some warped and erratic applications of statutory provisions which are not equally well-suited to the merchant or the housewife; thus recognition of the distinction will probably bring an additional advantage in permitting greater certainty of application of the rules provided by the Uniform Commercial Code.

Undoubtedly more important than this change in the technique of problem solution is the change which the Code offers to make in the quality of the draftsmanship of our sales law. Because the drafters of Code were able to benefit from our experience with the Uniform Sales

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4. See, e.g., Uniform Commercial Code §§ 2-508, 2-709, 2-722; for a more complete defense of the Code approach, see Latty, Sales and Title and The Proposed Code, 16 Law & Contemp. Prob. 3 (1951). Note, The Passage of Title, 14 Wyo. L. J. 25 (1959).
  5. Uniform Commercial Code § 2-401. See Hercules Powder Co. v. State Board of Equalization, 66 Wyo. 268, 208 P.2d 1096 (1949); Russell v. Walter Schultz Wholesale Grocery Co., 51 Wyo. 125, 64 P.2d 610 (1936).
  6. Uniform Commercial Code § 2-106.

Act, and because they were able to devote much more manpower to the project of drafting, they have produced a much more thorough piece of legislation. The Uniform Commercial Code would fill countless gaps which have appeared in the present law and would afford us a clarity of expression which we cannot now enjoy.

Much of what has been said can be demonstrated by a comparison of the present Wyoming statutes pertaining to bona fide purchasers of goods with the comparable Uniform Commercial Code provision.<sup>7</sup> Several significant differences between the two statutes can be readily observed. Subsection (1) of the Uniform Commercial Code provision rephrases the

7. USA § 23 (WS 34-187). Sale by a person not the owner. (1) Subject to the provisions of this Act [§§ 34-157 to 34-235] where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in this Act, however shall affect:

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

USA § (WS 34-188). Sale by one having a voidable title. Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

USA § 25 (WS 34-189). Sale by seller in possession of goods already sold. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

UCC 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting."

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under the transaction of purchase the purchaser has such power even though

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

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

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

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7).

old sections 23 and 24 of the Uniform Sales Act clearly and tersely and then adds new material to cover several situations which are troublesome and subject to doubt under existing law. Subsection (2) is a simplification of the old section 25 and Subsection (3) makes it clear that this simplification is intended to sweep aside a number of useless technicalities which have arisen to plague our present statute, such as the distinction favoring the right of unpaid sellers in a "cash sale" to reclaim the goods even in the hands of a later bona fide purchaser,<sup>8</sup> and the distinction between larceny by trick and civil fraud which has sometimes been imported into sales law to protect the same unpaid seller.<sup>9</sup> Also abolished are the technical limitations which are necessitated by the narrow language of our present section 25, which require, for instance, that the seller-bailee must have continuous possession of the goods from the time of his first sale or the second buyer cannot be protected.<sup>10</sup> This Section of the Uniform Commercial Code does make a minor change in the existing law by affording somewhat greater protection for fewer third-party purchasers. The reasoning of the drafters of the Code is clearly explained in the Official Comment:

The older loose concept of good faith and wide definition of value combined to create apparent good faith purchasers in many situations in which the result outraged common sense; the court's solution was to protect the original title especially by use of "cash sale" or of over-technical construction of the enabling clauses of the statutes. But such rulings then turned into limitations on the proper protection of buyers in the ordinary market. [The Code definition] cuts down the category of buyer in the ordinary course in such fashion as to take care of the results of the cases, but with no price either in confusion or in injustice to proper dealings in the normal market.<sup>11</sup>

This comparison of the two statutes is thus further evidence of what has perhaps already been adequately demonstrated: despite first impressions, the Code is not a revolutionary statute, but is merely a thorough, careful re-working of the present statutes to bring greater certainty, simplicity and fairness to our commercial laws. Most of the Code and especially of Article 2, compares with the existing law in much the way that these statutes compared. We will now proceed to consider in more detail the changes which were wrought by Article 2, but a complete understanding requires that the reader keep the perspective—these changes are but a lesser adjunct to the greater achievement of greatly improved draftsmanship.

#### *Formalities of the Sales Contract*

Part 2 of Article 2 of the Uniform Commercial Code would make a

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8. E.g., *Amols v. Berstein*, 214 App. Div. 469, 212 N.Y. Supp. 518 (1st Dept., 1925) (alternative holding).
  9. E.g., *Amols v. Bernstein*, supra note 8 (alternative holding).
  10. *Kelley v. Ness*, 182 Or. 661, 189 P.2d 570 (1948); *Goad v. Wellendorf*, 67 Colo. 40, 185 Pac. 470 (1919).
  11. Uniform Commercial Code § 2-403, Comment 3.

number of significant changes in the existing technical rules pertaining to the form, formation and readjustment of the sales contract. In general, these changes are intended to liberalize the present law by removing the more cumbersome technicalities and providing for results which more nearly conform to the reasonable expectations of the parties to commercial transactions.

Several significant changes are made in the Statute of Frauds provisions relating to contracts for the sale of goods. The most important of these changes would raise the minimum contract price needed to bring a sale within the Statute and thus make the requirement of a writing operative. The present minimum is \$50;<sup>12</sup> the Code would raise this to \$500.<sup>13</sup> This is clearly a desirable change. Almost never will the parties to a small sale think it necessary or desirable to reduce their agreement to writing and the Statute of Frauds is, in such instances, much more likely to serve as an instrument of fraud than as an inhibition of it. The Code would also liberalize the requirements as to the sufficiency of a memorandum of sale which is offered as a compliance with the Statute. Although the Uniform Sales Act is silent as to what is required in the way of a written memorandum, our Supreme Court has said that it "must contain in substantial terms the contract so that it cannot be misunderstood or confused with some other writing to which it refers, without resort to parol evidence; and such that one paper cannot be substituted for another."<sup>14</sup> Such a measure of detail in the written memorandum is much more than is needed to serve the purposes of the Statute and can make the Statute a very tough trap for the merchant who neglects to include a single term of the agreement in the memorandum. The Code expressly provides that there need be only a "writing sufficient to indicate that a contract for sale has been made between the parties. . . ."<sup>15</sup> This is limited in some measure by the further provision that the contract shall not be enforceable beyond the quantity of goods indicated in the writing. And also the Uniform Commercial Code would alter the effect of a partial performance of an unwritten contract. Under the existing statute, a partial performance removes the whole agreement from the application of the writing requirement.<sup>16</sup> This is somewhat irrational and the Code limits the effect to the extent of the performance. Thus the contract becomes enforceable "with respect to goods for which payment has been made and accepted or which have been received and accepted."<sup>17</sup>

One other change in the Statute of Frauds also bears mention; it is an example of the use of the new "merchant" concept previously described.

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12. WS 34-169.

13. Uniform Commercial Code § 2-201 (1).

14. *Burley-Winter Pottery Co. v. Onken Bros. & West Co.*, 26 Wyo. 287, 291, 183 Pac. 747, 749 (1919); *Noland v. Haywood*, 46 Wyo. 101, 106, 23 P.2d 845, 846 (1933).

15. Uniform Commercial Code § 2-201 (1).

16. *Saratoga Land & Investment Co. v. Jensen*, 20 Wyo. 323, 123 Pac. 415 (1912).

17. Uniform Commercial Code § 2-201 (3) (c).

Between merchants, failure to answer a written confirmation is made tantamount to acceptance of the terms of the confirmation<sup>18</sup> and, consistently with this provision, it is made tantamount to signing the confirmation for the purpose of meeting the requirements of the Statute of Frauds.<sup>19</sup> This is a very wise change; it is certainly in accord with general commercial practice that a merchant should be privileged to expect a fellow tradesman to speak up promptly if he intends to repudiate the contract as it is described in the confirmation. The present contrary rule permits the merchant receiving written confirmation of an oral agreement to repudiate or accept the contract as it may suit his advantage at the time performance is tendered. It is plainly unfair thus to have but one party committed to the bargain. The change is one that is long overdue.

Aside from the Statute of Frauds provisions, this Part also includes a number of other provisions which are largely declaratory of the common law of contracts; these are intended primarily to afford a greater measure of certainty in the law pertaining to the formation of the sales contract, but a few changes are made to make the law also more amenable to commercial practice. The same provision which requires the merchant to speak up if he objects to a provision of the written confirmation would also liberalize the rules of offer and acceptance to take care of the situation where both parties to a sales contract insist on using their own forms.<sup>20</sup> Under existing law, the use of slightly dissimilar forms will prevent the formation of a contract, regardless of the expectations of the parties at the time. It is said that there is no "meeting of the minds." The Uniform Commercial Code makes the expression of acceptance binding, even though it includes additional or different terms from those included in the offer. The new terms are then treated as offers to modify the contract and, as between merchants, these terms will become a part of the agreement unless they materially alter it or the original offeror makes seasonable objection.

One change is made in the needlessly technical common law parol evidence rule. Under existing case law, an "integrated" contract is presumed to be complete as to all matters agreed upon and the parties are not permitted to prove the existence of additional terms.<sup>21</sup> The Uniform Commercial Code recognizes that buyers and sellers may sometimes make a written agreement which is intended to be final as to the matters covered, but which is not intended to be complete; it permits the parties to explain or supplement the writing with "evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement."<sup>22</sup>

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18. Uniform Commercial Code § 2-207.

19. Uniform Commercial Code § 2-201 (2).

20. Uniform Commercial Code § 2-207. See also § 2-305, dealing with open price terms, which liberalizes the rules of offer and acceptance with respect to the requirement of definiteness.

21. *Bushnell v. Elkins*, 34 Wyo. 495, 246 Pac. 304 (1926).

22. Uniform Commercial Code § 2-202.

Another change is made to mitigate the rigors of the common law requirement of consideration. The rules of consideration are quite unsatisfactory as they are presently applied to deny effect to a communication which is represented as a firm offer. The purpose of the consideration requirement is to deny enforcement to promises which are ill-considered gifts on the part of the promisor; this purpose is not served by denying enforcement to the promise of a merchant to keep his offer open for a limited period of time. The Code therefore provides that such a firm offer is binding on a merchant if it is made in writing and the period of irrevocability is limited to three months.<sup>23</sup>

Another change which bears mention is concerned with oral modification or rescission of a written agreement; the existing law is that such a modification is valid if not within the Statute of Frauds.<sup>24</sup> This is probably contrary to the expectations of most businessmen and affords a considerable danger of false claims of modification. The Uniform Commercial Code provides additional protection against such claims by giving sanction to a signed agreement which excludes unsigned modification or rescission.<sup>25</sup> Finally, this Part of the Uniform Commercial Code would reverse the present presumption<sup>26</sup> that an assignment of a contract does not thereby delegate the duty of performing it, unless the language or circumstances indicate that this is the intent of the parties to the assignment.<sup>27</sup> This is a wise change which brings the law into conformity with the expectations of businessmen; the present rule is a trap for the unwary.

### *Obligations of Buyer and Seller*

The provisions of the Uniform Sales Act dealing with the construction of the sales contract are especially cryptic; for this reason, Part 3 of Article 2, dealing with the general obligation and construction of contracts contains a great deal of new material which is largely declaratory of the existing case law. As examples, this Part includes entirely new provisions dealing with output, requirements and exclusive dealing contracts,<sup>28</sup> with options and the obligation of one party to cooperate with respect to the performance of the other,<sup>29</sup> and with the definition of such important and common terms as "FOB"<sup>30</sup> and "CIF."<sup>31</sup> Also included is another entirely new provision dealing with unconscionable contracts or clauses;<sup>32</sup> this section has been the subject of some controversy, but seems well planned to serve a useful purpose. Experience has proved that courts confronted with the choice of making a warped construction of a contract

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23. Uniform Commercial Code § 2-205.

24. *Cooley v. Frank*, 68 Wyo. 436, 235 P.2d 446 (1951).

25. Uniform Commercial Code § 2-209.

26. *Williams v. McWhorter*, 30 Wyo. 229, 218 Pac. 791 (1923).

27. Uniform Commercial Code § 2-210.

28. Uniform Commercial Code § 2-306.

29. Uniform Commercial Code § 2-311.

30. Uniform Commercial Code § 2-319.

31. Uniform Commercial Code § 2-320.

32. Uniform Commercial Code § 2-302.

or an applicable statute or else serving as an instrument of oppression or unfair surprise to a party to a sales contract will almost always choose to warp the language. The resulting decisions create doubt as to the meaning which will be attributed to the same language in the future and are a source of uncertainty. The Uniform Commercial Code has solved this problem by authorizing the courts to refuse enforcement of contracts or clauses which they find to be unconscionable as a matter of law; this permits the courts to be candid in refusing to oppress abused litigants and saves the contract and statute from tortured construction. The disposition of courts to uphold the agreement being what it is, it is not to be expected that the Code provision will itself prove to be a source of uncertainty, despite the obvious vagueness of the term employed. It seems clear that the section cannot be used to disturb the allocation of risks which may result from disparity of bargaining power, but will serve to take care of situations where one party attempts to rely upon an apparent, but unintended, meaning to escape his contract obligation. The Official Comments to the Code<sup>33</sup> gives ten examples of cases decided under existing law which might have been handled more easily under the new unconscionable contract provision; one of these, which should suffice here, is a Utah case<sup>34</sup> in which 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. It is clear under the Code, as under existing law, that such a limitation would be upheld and applied if the contract had expressly made it applicable to latent defects. It would then simply be regarded as an allocation of risk. But in the instant case, the buyer could not reasonably be said to have been dealing with respect to latent defects when he agreed to the very short time limitation for complaint; hence he was unfairly surprised and the contract provision can be said to be "unconscionable" as applied to him. Thus the Uniform Commercial Code would dictate the same result as that obtained in the Utah court, but with less judicial agonizing over the meaning of the contract term.

As is typical of much of the Code, a number of the sections in this Part of the Code involve a redrafting designed to clarify problems which have proved difficult under existing law. An example is afforded by the Uniform Commercial Code provisions which define the obligations of buyer and seller in a "sale or return" or "sale on approval" transaction.<sup>35</sup> The Uniform Sales Act distinguishes between the two types of transactions in conceptual terms;<sup>36</sup> the Code provides a more helpful functional distinction: if the goods are delivered primarily for use, the transaction is treated as a sale on approval, but if the goods are delivered primarily for

33. Uniform Commercial Code §2-302, Comment 1.

34. *Kansas City Wholesale Grocery Co. v. Weber Packing Corp.*, 93 Utah 414, 73 P.2d 1272 (1937).

35. Uniform Commercial Code § 2-326.

36. Uniform Sales Act § 19(3), WS 34-184(3).

resale, the transaction is treated as a sale or return. The Code also makes it clear that if the buyer in a sale on approval makes a seasonable election to disapprove of the goods, he may return them at the seller's risk and expense. In a sale or return transaction, on the other hand, the risk and expense of the return is presumed to fall on the buyer.<sup>37</sup> These same provisions of the Code also make one significant change in the existing law concerning consignment sales. The trouble with the consignment sale as it is now used in Wyoming is that it gives the consignee a false appearance of wealth—the merchant appears to own an inventory, where in fact he is but a bailee. Of course, the consumer who buys from such a stock is protected, for the purpose of the consignment is to sell to him; but the creditor of the consignee, who may rely on the appearance of wealth, cannot satisfy himself from assets held on consignment. The Uniform Commercial Code would reverse this rule and treat the consignment sale as a sale or return so far as the creditors of the consignee are concerned, unless the consignee is generally known to be dealing in the goods of others, or unless the consignor complies with the filing requirements of Article 9 (Secured Transactions). The change seems eminently fair to all the parties concerned; the only persons who could find any basis for complaint are merchants who plan to defraud their creditors, or distant suppliers who want to sell on consignment, but who do not want to be troubled with our local filing requirement even though such filing would afford our local creditors with an opportunity to protect themselves from the fraudulent merchant. Neither of these groups are in a position to present a very appealing case for maintaining the present rule and the change seems clearly desirable.

Perhaps the most significant contribution of this Part of the Code is found in the provisions which re-draft the law of warranties.<sup>38</sup> Two minor changes are offered: the warranty of title has been altered<sup>39</sup> to drop the superfluous covenant of quiet enjoyment<sup>40</sup> and add the more useful covenant against third party claims of infringement; and the warranty of fitness for a particular purpose has been amended<sup>41</sup> to drop the exception concerning sales "under a trade name"<sup>42</sup> which has been a source of considerable confusion in trying to predict the application of the existing statute. Of course, it is still true under the Code that a plaintiff claiming such a warranty must show that he relied on the skill of the seller in selecting goods suitable for his purpose and evidence that the plaintiff had asked for the goods by their trade name would be persuasive that the necessary reliance was missing. The most important provisions concerning warranties, however, are entirely new. One new section deals with dis-

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37. Uniform Commercial Code § 2-327.

38. For a more detailed discussion, see Note, Sales Warranties Under the Uniform Commercial Code, 14 Wyo. L.J. 246 (1960).

39. Uniform Commercial Code § 2-312.

40. Uniform Sales Act § 13(2), WS 34-178(2).

41. Uniform Commercial Code § 2-315.

42. Uniform Sales Act § 15(4), WS 34-180(4).

claimers of warranties,<sup>43</sup> a fertile subject of litigation in which the Uniform Sales Act gives no guidance. The approach taken by the Code is that the parties have freedom to restrict warranties in any way they chose, but the restriction must be plain to the buyer; the seller is not permitted to avoid liability by stealth. This section of the Code rejects the idea that a buyer who examines the goods must take his chances regardless of statements made by the seller. If the examination is accompanied by words of reassurance as to the quality of the goods, and the buyer openly relies on these words, the words give rise to an express warranty which must be expressly disclaimed.

Another new provision is concerned with the problem of privity of contract and warranty liability. The 18th century common law regarded the warranty as a part of the sales contract and therefore concluded that the seller's liability extended only to the immediate buyer.<sup>44</sup> The developing case law in this country, however, has taken the view that this liability arises apart from any meeting of the minds and that the supplier who is responsible for defective or harmful goods should be held accountable even though the party ultimately injured was not the buyer.<sup>45</sup> A few courts, principally in the east, have been confronted with claim-conscious communities, and have perhaps been mindful that the manufacturers who most benefited from the rule were local industries; they have remained "bastions of privity" and have shielded the manufacturer from liability to consumers by the use of the old common law rule.<sup>46</sup> Of course, it is true that in many cases, unless an intrafamily immunity or some other defense breaks the chain, the manufacturer or remote supplier can still be held accountable for breach of warranty<sup>47</sup> by a series of suits against intermediate sellers, despite the privity requirement. But this is a cumbersome process, and produces many arbitrary and unfair results. The Uniform Commercial Code has sought to compromise the conflict by providing that the seller's warranty extends, at the least, to the family, household, and guests of his buyer who suffer personal injury.<sup>48</sup> This takes care of

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43. Uniform Commercial Code § 2-316.

44. *Staurt v. Williams*, 1 Dougl. 18 (1778).

45. *Jacob E. Decker & Sons Inc. v. Capps*, 139 Tex. 609, 164 S.W.2d 828 (1942); *Klein v. Duchess Sandwich Co.*, 14 Cal.2d 272, 93 P.2d 799 (1939); *Curtiss Candy Co. v. Johnson*, 163 Miss. 426, 141 So. 762 (1932); *Ward Baking Co. v. Trizzino*, 27 Ohio App. 475, 161 N.E. 557 (1928). The leading cases taking this view all involve impure food, but there is not apparent reason for rejecting the privity requirement only in such cases. But see *Davis v. Van Camp Packing Co.*, 189 Iowa 775, 176 N.W. 382 (1920).

46. *Lombardi v. California Packing Sales Co.*, 83 R.I. 51, 112 A.2d 701 (1955); *Torpey v. Red Owl Stores, Inc.*, 228 F.2d 117 (8th Cir. 1955); *Chysky v. Drake*, 235 N.Y. 468, 139 N.E. 576 (1923). But cf. *Mouren v. Great Atlantic & Pacific Tea Co.*, 1 N.Y.2d 884, 136 N.E.2d 715 (1956).

47. It should also be recalled that, in many cases, the privity requirement will not be imposed on a plaintiff who can establish the negligence of the manufacturer or supplier. *McPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916). Also, criminal statutes, e.g., WS 35-236, can help to bridge the privity gap. *Wright v. Carter Products*, 244 F.2d 53 (2d Cir. 1957).

48. Uniform Commercial Code § 2-318.

the child who eats the rotten crabmeat which his mother bought, but it is not an altogether satisfactory solution to the problem. The Supreme Court of Wyoming has not yet had occasion to pass on the question, so the Code would still leave open the difficult problem of how far beyond the family the liability extends. It would therefore seem worthwhile for the Wyoming legislature to consider an amendment to the Code which will resolve the problem. It seems to this writer that it would be wise to anticipate the trend of the American case law somewhat and cast privity to the winds.<sup>49</sup> The only effective purpose which the requirement of privity can serve in Wyoming is to protect manufacturers who sell sour catsup or defective hay balers from liability to Wyoming consumers who are poisoned or injured or forced to pay a big repair bill. The purpose seems an unworthy one for Wyoming law-making, and it is therefore suggested that Section 2-318 of the Code be amended to read:

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

#### *Performance and Breach*

The Parts of Article 2 dealing with performance, breach, repudiation and excuse from performance of the sales contract conform to the general pattern already established. Several sections are entirely new; others are extensions and clarifications of the existing statutes; but many present only a simplified re-drafting of our present law. Two of the clarifications would be especially valuable. Section 42 of the Uniform Sales Act<sup>50</sup> provides simply that delivery and payment are concurrent conditions; in other words, that both parties presumably intend to perform simultaneously. Section 47 (2),<sup>51</sup> on the other hand, provides that the buyer is entitled to examine the goods before accepting delivery. These two provisions are difficult to reconcile in modern commercial transactions where the parties are a distance removed from one another. The Code provisions shed a great deal of light on this problem by defining carefully the effect of tender by either party<sup>52</sup> and providing the details as to the buyer's right of inspection.<sup>53</sup> A second clarification that will be very useful concerns the ritual of acceptance of the goods; the Uniform Sales Act makes frequent use of this concept with sometimes disjointed results.<sup>54</sup> The Uniform Commercial Code continues the use of the term, but clearly defines the

49. Accord Traynor, J., concurring in *Escola v. Coca Cola Bottling Co.*, 24 Cal.2d 453, 150 P.2d 436 (1944). For a more recent academic expression of a similar view, see Whitney, *The Law of Modern Commercial Practices* 551 (1958).

50. WS 45-207.

51. WS 34-212 (2).

52. Uniform Commercial Code §§ 2-310, 2-507, 2-511. An example of the difficulties is found in *Teton Auto Co. v. Northwestern Pure Bred Sow Co.*, 48 Wyo. 478, 49 P.2d 643 (1935). The Code would not alter the result in that case.

53. Uniform Commercial Code §§ 2-512, 2-513.

54. Compare Uniform Sales Act, §§ 41, 48, 49, 69, WS 34-206, 34-213, 34-214, 34-234.

consequences of acceptance<sup>55</sup> and provides for the revocation of an acceptance.<sup>56</sup> In this last-mentioned section, the Code abandons the term "recission" which has been a source of considerable confusion during the life of the Uniform Sales Act.

The substantive changes which would be effected by the Code serve several entirely uncontroversial purposes. Some of the changes are intended to reduce the opportunities for one party to a commercial contract to take advantage of legal technicalities to the prejudice of the rights of the other. Thus a seller is given an opportunity to cure an improper tender or delivery if he reasonably believed that the goods delivered or tendered would be acceptable to the buyer.<sup>57</sup> Fair-dealing is similarly promoted by a new section which imposes upon the buyer, under certain circumstances, a duty to particularize his objections to the goods, upon pain of waiving his claim of defective performance.<sup>58</sup>

Other provisions are intended to reduce the amount in controversy when a dispute arises between buyer and seller by providing for an orderly distribution of the goods. Thus, a buyer is authorized, where practicable, to accept partial performance without prejudice to his rights with respect to the remaining breach<sup>59</sup>, and a buyer who rightfully rejects goods is required nevertheless to assume some responsibility for their disposition if the seller is not reasonably able to protect himself;<sup>60</sup> further, any buyer is given the right to salvage the value of the goods for the seller's account, if he chooses to do so and the seller provides no contrary instructions.<sup>61</sup> Likewise, the Code provides for the preservation of evidence of goods in dispute,<sup>62</sup> thereby promoting certainty as to the condition of the goods and reducing uncertainty in litigation. All of these provisions should have the effect of confining the dispute to the narrowest possible limits and thereby encouraging settlement and the continuation of harmonious commercial relationships.

Still other changes are intended to give greater assurance to the parties to commercial agreements that they are contracting to secure a performance of the agreement and not an interest (even a valuable one) in litigation. Thus, a buyer who has made payment and acquired an interest in identified goods may recover them even though the seller is insolvent, if the insolvency occurs within ten days after receipt of payment.<sup>63</sup> And both parties are given the right, if reasonable grounds for insecurity arise, to insist upon adequate assurance of performance and suspend performance for which they have not already received the agreed return.<sup>64</sup>

55. Uniform Commercial Code § 2-607.

56. Uniform Commercial Code § 2-608.

57. Uniform Commercial Code § 2-508.

58. Uniform Commercial Code § 2-605.

59. Uniform Commercial Code § 2-601 (c).

60. Uniform Commercial Code § 2-603.

61. Uniform Commercial Code § 2-604.

62. Uniform Commercial Code § 2-515.

63. Uniform Commercial Code § 2-502. A similar right is given the seller by § 2-702.

64. Uniform Commercial Code § 2-609.

*Remedies on Default*

The Part of Article 2 dealing with remedies is true to the pattern established in the preceding Parts; a few substantive changes are made in existing law which bear mention. The most important of these changes would serve the purpose of reducing the amounts involved in commercial controversies by encouraging the parties to fix the measure of recovery for default by proceeding in a commercially reasonable manner. Thus, the buyer is authorized to fix the measure of his recovery for the failure of the seller to deliver by means of "cover."<sup>65</sup> If he proceeds reasonably, he is entitled thereafter to recover the difference between the contract price and the price of the "covering" goods he acquires from another seller and he need not be concerned with proving (as he must under the Uniform Sales Act)<sup>66</sup> the market price at the time and place of default. This is much fairer to the buyer and should encourage amicable settlements since it removes the question of damages from the area of dispute. The same purpose is served by the Code provisions dealing with the seller's remedy in fixing the measure of his recovery against a defaulting buyer by a resale of the goods to another buyer. This is, of course, permitted under existing law,<sup>67</sup> but the Code expands its use by restricting the seller's alternative right to treat the goods as the property of the buyer and maintain an action for the price.<sup>68</sup> Under the Uniform Sales Act, the seller may recover the price of the goods if title has passed, or if the price is payable on a "day certain," or if the goods are not readily resalable.<sup>69</sup> The Code provision limits this remedy to cases where the goods are not readily resalable, except where the buyer has accepted the goods or where they have been destroyed after risk of loss has passed. As presently used under the Uniform Sales Act, the recovery of the price can be an unnecessary oppression to the defaulting buyer since it tends to relieve the seller in possession of the goods of any economic interest in efficient resale. By restricting the price remedy, the Uniform Commercial Code effectively encourages the seller to fix the defaulting buyer's liability fairly and quickly by reasonable resale.

Other changes effected by this Part of Article 2 would remove some of the technical limitations on the remedies of aggrieved buyers and sellers. One section<sup>70</sup> extends the seller's right to stop delivery to the buyer. At present, that right is restricted to situations where the goods are in the hands of a carrier and the buyer is insolvent. The Code extends this remedy to cover other circumstances, although the right to stop for reasons other than insolvency is limited to carload, truckload, planeload or larger shipments. Another section<sup>71</sup> extends the buyer's right to specific per-

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65. Uniform Commercial Code § 2-712.

66. Uniform Sales Act § 67, WS 34-232.

67. Uniform Sales Act § 60, WS 34-225.

68. Uniform Commercial Code § 2-709.

69. Uniform Sales Act § 63, WS 34-228.

70. Uniform Commercial Code § 2-705.

71. Uniform Commercial Code § 2-716.

formance beyond the present technical requirement that the contract thus enforced pertain to specific or ascertained goods<sup>72</sup> and encourages courts to look beyond the traditional test of uniqueness to find other situations which justify the exercise of their discretionary power. Still another new section<sup>73</sup> is designed to mitigate the rigors of existing technicalities pertaining to the election of remedies. Under the Uniform Sales Act, a buyer who accepts a tender of a substitution of other goods for defective goods has been held to have lost his right to recover damages resulting from the breach, because he has "rescinded" the original agreement and may not accumulate his remedies.<sup>74</sup> The Code provision would reverse the rule of construction which produces this unfair result.

The Uniform Commercial Code provision dealing with liquidation of damages<sup>75</sup> is largely declaratory of existing common law, although it would appear to overrule the old Wyoming case of *Ivinson & Co. v. Althrop*,<sup>76</sup> which seems to hold that any contract provision which describes itself as a liquidation of damages will be enforced without regard to the reasonableness of the liquidation. This section does also add one new feature which provides the defaulting buyer with a right to restitution of payments exceeding 20% of the price or \$500, whichever is smaller, subject to the seller's right to damages or restitution for benefits conferred. This provision will not enjoy frequent application, but it is a desirable limitation on excessive forfeitures which can now result in cases where the defaulting buyer encounters the rule that a contract breaker is not entitled to restitution.<sup>77</sup>

Reflection on the foregoing analysis compels the conclusion that Article 2 is a substantial improvement on the Uniform Sales Act; while it will not significantly alter the ultimate result in most commercial disputes, it should ease the path to peaceful solution, and may, by providing greater certainty in the application of the rules, prevent many such disputes from arising.

#### *Article 6—Bulk Sales*

Although the Commissioners on Uniform State Laws have never before proposed a uniform act dealing with bulk sales, every state has adopted some legislation on the subject. Such statutes are intended to protect unsecured creditors of merchants who might be disposed to strip

72. Uniform Sales Act § 68, WS 34-233.

73. Uniform Commercial Code § 2-720.

74. Uniform Sales Act § 69 (2), WS 34-234 (2). Cf., *Gerli & Co. v. Mistletoe Silk Mills*, 80 N.J.L. 128, 76 Atl. 335 (1910). This may be no change at all in Wyoming law; our Supreme Court has held that rescission is not barred by the buyer's continuation of the business which he has purchased where that is necessary to preserve its going-concern value. *Fryer v. Campbell*, 48 Wyo. 122, 43 P.2d 994 (1935). Cf., *Plunkett v. Comstock Cheney Co.*, 211 App. Div. 737, 208 N.Y. Supp. 93 (1st Dept. 1925).

75. Uniform Commercial Code § 2-718.

76. 1 Wyo. 71 (1872).

77. *Lawrence v. Demos*, 70 Wyo. 56, 244 P.2d 793 (1952).

themselves of assets or liquidate inventory and fixtures and abscond with the proceeds. The Wyoming Bulk Sales Law is typical in that it declares a bulk sale of inventory or fixtures, outside the regular course of business, to be presumptively fraudulent and therefore void as to the creditors of the seller unless the buyer secures from the seller a list of the creditors and notifies each five days in advance of the impending sale.<sup>78</sup> Many of the existing bulk sales laws are inadequate and it has long been thought desirable to secure greater uniformity between states, and the sponsors therefore deemed it desirable to include a bulk sales law at Article 6 of the Uniform Commercial Code.

The existing Wyoming law is so cryptic that it is a wonder that merchants and lawyers have been able to live with it for fifty years. Article 6 would be a tremendous improvement in two respects. First, it would limit the application of the bulk sales law to situations in which it really serves its intended purpose. It should be recognized that compliance with the law is a great nuisance to buyers and sellers of goods; the drafters of the Code took the view that they should not be burdened with this nuisance unless the creditors of the seller have a real interest to be protected and they have accordingly limited the application of the bulk sales law requirements. Also, Article 6 resolves many questions which are left open by the existing Wyoming law which must some day give trouble, unless the answers are provided.

Most of the limitations on the application of Article 6 are found in one section which lists eight kinds of transfers which are excepted. Only two of these exceptions are authorized by the existing Wyoming statute,<sup>79</sup> although others might perhaps be created by judicial construction consistently with the apparent purpose of the law. Transfers which would be specifically excepted are bulk mortgages,<sup>80</sup> general assignments for the benefit of creditors,<sup>81</sup> transfers to buyers who assume the debts of the seller,<sup>82</sup> transfers arising out of a reorganization of the business,<sup>83</sup> and transfers of property which is exempt from execution.<sup>84</sup> Perhaps the most important limitation on the application of Article 6 is, however, to be found in the provision which makes the Article applicable only to sellers whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.<sup>85</sup> This excludes application to sellers who are primarily engaged in the sale of services; the view of the drafters of Article 6 was that creditors who lend to farmers, barbers, restaurants, and the like, are not relying on a stock of merchandise or fixtures to satisfy

78. WS 34-237.

79. See the last sentence of WS 34-236. Compare Uniform Commercial Code § 6-103 (4) and (5).

80. Uniform Commercial Code § 6-103 (1) and (3).

81. Uniform Commercial Code § 6-103 (2).

82. Uniform Commercial Code § 6-103 (6).

83. Uniform Commercial Code § 6-103 (7).

84. Uniform Commercial Code § 6-103 (8).

85. Uniform Commercial Code § 6-102 (3).

their claim and that there is therefore no reason to compel compliance with the bulk sales law when such a seller disposes of his fixtures. The Code does appear to extend the application of the bulk sales law in one respect by providing for compliance in sales by auction.<sup>86</sup> It would be difficult to apply the existing law to such sales, despite the fact that an auction would be a very satisfactory, if not a likely, way for a merchant seller to achieve the objectives which are intended to be forbidden by the bulk sales law. The new provision dealing with auctions is therefore plainly desirable.

Article 6 fills in a number of different kinds of details. Perhaps most important are the provisions detailing the method of compliance.<sup>87</sup> These provisions do, however, raise two questions which must be decided for Wyoming. The existing Wyoming statute provides that the creditors must be given five days advance notice of the sale; the Code extends the period to ten days.<sup>88</sup> The Official Comment explains that the purpose of the law is to permit the creditors to determine before, rather than after, whether they should try to stop a proposed sale. "To be effective, it requires a longer notice than five days."<sup>89</sup> This writer is disposed to dispute this assertion; if the parties to the sale comply with the detailed notice requirements, the creditor should have an adequate basis for decision as to whether he should oppose the sale or attempt to impound the proceeds in some way. The extension of the notice period to ten days therefore seems to impose an unnecessary burden of delay on the buyer and seller. This is a question on which the persons affected should be consulted, but it would seem appropriate to consider preservation of the five day notice period presently prevailing in Wyoming. A second question is raised by optional provisions which would adopt the so-called "Pennsylvania rule" which imposes on the buyer the burden of actually paying the debts listed by the seller; this seems unnecessary and unwise and is at odds with the prevailing practice in most states. Wyoming should follow the lead of states other than Pennsylvania which have adopted the Code, and reject the optional provisions of Article 6.

The Code is also more specific in defining the consequences of non-compliance, particularly with reference to subsequent transfers of the property by the bulk buyer. The Code provision provides that a good faith purchaser for value takes free of the defect in the title of his transferor which arises from previous non-compliance with the bulk sales law.<sup>90</sup> One basic change is made in the consequences of non-compliance: under existing law, non-compliance creates a presumption of fraud which can be overcome if the buyer establishes his good faith in the transaction,<sup>91</sup>

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86. Uniform Commercial Code § 6-108.

87. Uniform Commercial Code §§ 6-104, 6-105, 6-107.

88. Uniform Commercial Code § 6-105.

89. Uniform Commercial Code § 6-101, Comment 3.

90. Uniform Commercial Code § 6-110.

91. *Wyman, Partridge & Co. v. Tierney*, 42 Wyo. 321, 294 Pac. 781 (1930).

while the Code would make the transfer ineffective against the creditors without regard to the good faith of the non-complying buyer.<sup>92</sup> The present rule serves no useful purpose since no buyer can reasonably rely on being able to satisfactorily demonstrate his good faith; the effort of the rule is simply to add an element of risk in the enforcement of the law. The Code also clarifies two other troublesome problems in resolving the choice of law question in favor of the law of the place where the goods are located at the time of the transfer<sup>93</sup> and by providing a six month limitation on actions or levies of aggrieved creditors.<sup>94</sup> It is not clear under existing law which limitation, if any, is applicable in such cases. The short period imposed by the Code seems reasonable for it is very unlikely that a creditor who delays for more than six months is placing much reliance on the goods sold in extending creditor to the transferor.

Subject to the question raised concerning the proper period of notice to be required, it seems plain that Article 6 would be very beneficial to everyone concerned with bulk sales transactions in Wyoming. It offers a great improvement in simplicity and certainty over the existing law.<sup>95</sup>

#### *Article 7—Documents of Title*

This Article is concerned with bills of lading and warehouse receipts and would replace the Uniform Warehouse Receipts Act,<sup>96</sup> five sections of the Wyoming Statutes which deal with bills of lading,<sup>97</sup> and fourteen sections of the Uniform Sales Act which pertain to documents of title.<sup>98</sup> For reasons which now seem lost to mind, Wyoming never adopted the Uniform Bills of Lading Act, which would be displaced by the Code in most states.

Perhaps the reason that this Act was not adopted is its lack of importance in Wyoming. The rights of the parties to bills of lading which are issued in the course of interstate commerce are governed by the Federal Bills of Lading Act<sup>99</sup> and the Intersate Commerce Act;<sup>100</sup> inasmuch as it is a rare transaction which produces a contract of carriage of goods between two places in Wyoming, the local law of bills of lading has few occasions for application. It is nevertheless true that insofar as the present Wyoming law pertaining to such bills has application, it is quite thoroughly unsatisfactory. The Chapter of the Wyoming statutes dealing with bills of lading contains eight sections; of these, only five deal with matters covered by the Uniform Bills of Lading Act and Article 7, and these compare with fifty-seven sections in the Uniform Law. These five sections

92. Uniform Commercial Code § 6-104 (1).

93. Uniform Commercial Code § 6-102 (4).

94. Uniform Commercial Code § 6-111.

95. For a more modest endorsement of Article 6, see Note, Bulk Sales Under The Uniform Commercial Code, 14 Wyo. L.J. 30 (1959).

96. WS 34-315 et seq.

97. WS 34-291 through WS 34-295.

98. Uniform Sales Act §§ 27-40, WS 34-192 through WS 34-205.

99. 39 Stat. 538 (1916), as amended, 49 U.S.C. §§ 81-124 (1946).

100. 34 Stat. 593 (1906), as amended, 49 U.S.C. § 20 (1946).

are much too skimpy to provide guidance for the solution of most of the problems arising out of the issuance of bills of lading. Furthermore, most of the provisions of these five sections are affirmatively undesirable. Two of them are concerned with the carrier's responsibility for the issuance of false or duplicate documents.<sup>101</sup> A purchaser of a bill of lading relies upon the carrier's representation that the goods described are in transit; if the document was issued before the carrier received the goods, or if the bill is a duplicate and not clearly marked as such, this reliance is misplaced. The Uniform Bills of Lading Act quite reasonably places liability on the carrier in such a case.<sup>102</sup> This is probably declaratory of the common law. But the existing Wyoming statute simply declares the conduct of the carrier in issuing such a false bill to be criminal.<sup>103</sup> This casts considerable doubt on the carrier's just civil liability: it is possible to argue that if the legislature intended that the carrier should suffer civil liability, it would not have imposed the criminal sanction for, if the carrier is liable, then the only person hurt by the carrier's conduct is the carrier itself. In such circumstances, the criminal liability would not seem appropriate. It must surely be granted that the denial of civil liability would be an outrage and that the Uniform Commercial Code provision<sup>104</sup> which would prevent the possibility of such an occurrence is very welcome. Still another defect which appears in the same Wyoming statute is the failure to impose any liability on the carrier for misdescriptions of the goods in the bill. The Uniform Commercial Code would clear this up and also provide in some detail for the carrier's disclaimer of responsibility for the description, as where the goods are shipped "seller's load and count."<sup>105</sup>

Another unfortunate feature of the existing statutes concerns lost bills of lading. The Wyoming statute provides that the carrier may surrender goods shipped under an order bill only if the bill is surrendered, or the recipient posts bond for double the value of the property.<sup>106</sup> If one of these conditions is not met, delivery by the carrier is a crime. This is entirely too inflexible; not even a court, much less a willing carrier, can relax these requirements, which seem quite stiff, especially in light of the difficulty of finding an available surety. The Uniform Commercial Code would afford some leeway in handling the problem and would have the salutary effect of clearing the premises of unnecessary and unenforced criminal provisions.<sup>107</sup>

Two Code sections dealing with bills of lading are clearly changes in the existing, unwritten Wyoming law. One of these authorizes the

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101. WS 34-291 and WS 34-292.

102. Uniform Bills of Lading Act §§ 18 and 23.

103. WS 34-292.

104. Uniform Commercial Code § 7-301 (1).

105. Uniform Commercial Code § 7-301 (4).

106. WS 34-293.

107. Uniform Commercial Code § 7-601.

carrier to issue the bill of lading at destination when requested to do so by the consignor;<sup>108</sup> this will be a convenient change in transactions involving air or truck transport which may permit delivery of the goods before the documents could reach the consignee by mail. Another extends the carrier's lien to stolen goods in cases where the carrier is by law required to receive them and has no notice that the consignor lacks authority to ship them.<sup>109</sup> This seems more reasonable than the existing contrary rule which often produces unjust enrichment of the owner and hardship on the carrier. A similar provision preserves the warehouseman's lien, except that the warehouseman's lien applies to stolen goods only if the owner entrusted the goods to the bailor.<sup>110</sup>

One change would be made in the rules peculiar to warehouse receipts. This protects the buyer in ordinary course of fungible goods sold by a warehouseman who is a dealer in such goods; such a buyer takes free of any claim under an outstanding warehouse receipt.<sup>111</sup> As the Official Comment explains, the practical difficulty of tracing fungible goods means that the imposition of the risk on the good faith purchaser adds little to the value of the receipt. Also, the receipt holder is still in a position to share in the fungible goods remaining in the warehouse, whereas the good faith purchaser is reduced, under the present rule, to the status of a general creditor of an insolvent warehouseman. The right of the receipt holder to such a share is assured by another section of the Uniform Commercial Code,<sup>112</sup> which expressly provides for distribution of short goods to all holders of overissued receipts.

Finally, two changes are proposed which relate to the rights of holders of documents of title (either bills of lading or warehouse receipts). First, the transferee is assured of the right to have a transferor supply a missing, necessary indorsement<sup>113</sup> without regard for the present requirement that the transferee must be a holder "for value."<sup>114</sup> The old rules of consideration have no place in this question and the change is very minor, but welcome. More importantly, the Uniform Commercial Code narrows the class of persons accorded the status of good faith purchasers, and broadens the rights of the remaining class. The old Uniform Act protects the good faith purchaser of a bill of lading running to bearer, even if he acquires the bill from a thief.<sup>115</sup> This may not be true under the common law rules pertaining in Wyoming. And, under the existing statute, it is not true for the good faith purchaser of a warehouse receipt; the trans-

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108. Uniform Commercial Code § 7-305.

109. Uniform Commercial Code § 7-307. Cf., *Swinson v. Atchison, T. & S. F. Ry.*, 117 Kan. 258, 230 Pac. 140 (1923).

110. Uniform Commercial Code § 7-209. Compare Uniform Warehouse Receipts Act § 28 (b), WS 34-346 (b).

111. Uniform Commercial Code § 7-205.

112. Uniform Commercial Code § 7-207.

113. Uniform Commercial Code § 7-506.

114. Uniform Sales Act § 35, WS 34-198, Uniform Warehouse Receipts Act § 43, WS 34-361.

115. Uniform Bills of Lading Act §§ 31, 38.

feree of a warehouse receipt acquires no better title than his transferor unless the latter has been entrusted with possession by the owner.<sup>116</sup> The Uniform Commercial Code protects the innocent purchaser of any bearer document against this risk.<sup>117</sup> But, in doing so, the Code raises the existing standards of innocence: the claim to good faith is defeated if the negotiation of the document is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.<sup>118</sup> With respect to this latter change, the Official Comment explains that no commercial purpose is served by allowing a tramp or a professor to "duly negotiate" a document for hides or cotton not his own.

In addition to these rather minor changes in existing law, the Uniform Commercial Code would clarify a number of problems which are presently troublesome. Under existing law, neither a carrier<sup>119</sup> nor a warehouseman<sup>120</sup> may relieve himself of responsibility for his own negligence by agreement of the bailor. This rule raises some question about the validity of binding declarations which undervalue the goods. It is beneficial to all parties to give effect to such limitations on claims, for otherwise the bailor who is otherwise adequately insured against loss is forced to pay a second price for protection. The Code makes it clear that such declarations may be given effect.<sup>121</sup> Another difficulty with existing statutes is their failure to make clear who can give a carrier effective instructions for reconsignment or to provide a simple statement of the bailee's obligation on the document. Obscurity is now afforded by overlapping provisions in the Uniform Warehouse Receipts Act dealing with the warehouseman's obligation to deliver, his justification in delivering, and his liability for misdelivery.<sup>122</sup> The Uniform Commercial Code remedies this defect.<sup>123</sup> Also clarified is the course of action to be followed by a bailee who is confronted with conflicting claims to goods in his possession.<sup>124</sup> And, also worthy of mention, is a new provision which defines the warranties made by a bank when it makes delivery of a document of title in the course of making a collection for the seller in a documentary transaction.<sup>125</sup>

It is doubtless apparent to the reader that the changes which Article 7 would make in present Wyoming statutes are mostly trivial. The advan-

116. Uniform Warehouse Receipts Act §§ 40, 47, WS 34-358 and WS 34-365. At the suggestion of the Commissioners on Uniform State Laws, made in 1922, many states amended the Uniform Warehouse Receipts Act to conform to the Uniform Bills of Lading Act rule. Wyoming did not.

117. Uniform Commercial Code § 7-501 (1).

118. Uniform Commercial Code § 7-501 (4).

119. Oregon Short Line Ry. Co. v. Blyth, 19 Wyo. 410, 118 Pac. 649 reh. den. 19 Wyo. 410, 119 Pac. 875 (1911).

120. Uniform Warehouse Receipts Act § 3 (b), WS 34-323 (b).

121. Uniform Commercial Code §§ 7-204 and 7-309.

122. See Uniform Warehouse Receipts Act § 8 et seq., WS 34-326 et seq.

123. Uniform Commercial Code §§ 7-303, 7-403 and 7-504 (2).

124. Uniform Commercial Code § 7-603.

125. This section would have assured the result in Stacy-Vorwerk Co. v. Buck, 42 Wyo. 186, 291 Pac. 809 (1930), cert. den. 283 U.S. 849 (1931).

tage to be gained from enactment of this portion of the Uniform Commercial Code must therefore be found in the fact that the Code is a much more thorough and painstaking drafting job. This is especially true with reference to our bills of lading laws, but it is also significant with reference to our Uniform Warehouse Receipts Act.