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# The Uniform Commercial Code Survey: Introduction

By Jennifer S. Martin, Colin P. Marks, and Wayne Barnes\*

The survey that follows highlights the most important developments of 2014 dealing with domestic and international sales of goods, personal property leases, payments, letters of credit, documents of title, investment securities, and secured transactions. Along with the usual descriptions of interesting judicial decisions in these areas, which are highlighted in the survey, there has also been important legislative progress. The 2010 amendments to U.C.C. Article 9<sup>1</sup> have been adopted in forty-nine states, the District of Columbia, and Puerto Rico, and introduced in Oklahoma.<sup>2</sup> Those revisions were summarized in the Introduction to the 2009 survey.<sup>3</sup> Additionally, the 2012 amendments to U.C.C. Article 4A, which address issues related to the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, have been adopted by forty-three states and the District of Columbia, and introduced in Connecticut, Kansas and Vermont.<sup>4</sup>

Other legislative initiatives have seen modest adoptions. In 2011, the Uniform Law Commission completed a new Uniform Certificate of Title for Vessels Act that is designed to harmonize state certificate of title laws with federal laws regarding vessels, and with Article 9 to impede theft and facilitate boat financing.<sup>5</sup>

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1. See NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 (2010), available at [http://www.uniformlaws.org/shared/docs/ucc9/ucc9\\_am10\\_notstyled.pdf](http://www.uniformlaws.org/shared/docs/ucc9/ucc9_am10_notstyled.pdf).

2. See *UCC Article 9 Amendments (2010), Legislative Tracking*, UNIF. L. COMMISSION, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC%20Article%209%20Amendments%20%282010%29> (last visited May 8, 2015).

3. Russell A. Hakes & Stephen L. Sepinuck, *The Uniform Commercial Code: Introduction*, 65 BUS. LAW. 1205, 1205-08 (2010).

4. See *UCC Article 4A Amendments (2012), Legislative Tracking*, UNIF. L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=UCC%20Article%204A%20Amendments%20%282012%29> (last visited May 8, 2015).

5. The final act approved at the 2011 annual meeting of the Uniform Law Commission can be accessed at [http://www.uniformlaws.org/shared/docs/certificate\\_of\\_title\\_for\\_vessels/ucotav\\_prestylefinal\\_jul11.pdf](http://www.uniformlaws.org/shared/docs/certificate_of_title_for_vessels/ucotav_prestylefinal_jul11.pdf) (last visited June 9, 2014).

This has been adopted by the States of Virginia and Connecticut and the District of Columbia and is under consideration in Alabama.<sup>6</sup> Adoption of the 2003 revisions of Article 7 continues, with the revisions having been adopted by the District of Columbia and forty-eight states and the revisions are under consideration in Vermont.<sup>7</sup>

There were also significant and instructive judicial developments in 2014. There were interesting developments under Article 2, including a questionable remedies decision in a case involving a seller who resold goods at a profit and claimed a market-based remedy under section 2-708. The court found that the lack of clarity in Article 2 supported a finding that the seller could collect a remedy in excess of expectation damages.<sup>8</sup>

The leasing survey also includes a number of interesting cases. One case from the U.S. Court of Appeals for the Sixth Circuit involved a lease of dairy cattle and addressed the priority dispute between the lessor and a secured creditor claiming a security interest in the cattle. The case contains a good overview of the issues involved with the determination of whether a lease is characterizable as a disguised financing or a true lease.<sup>9</sup> Another case addressed a lessor's representations when assigning a lease and its stream of payments to an assignee, and the court held that the representations were enforceable without proving direct reliance by the assignee. The opinion increases the predictability of enforcement of such leasehold assignments.<sup>10</sup>

In the payments area, the New York Court of Appeals held that a fourteen-day notice period was not manifestly unreasonable under section 4-103. However, in a line that is sure to give some consumer advocates solace, the court indicated that its holding "is limited to the case of a corporate entity that either is financially sophisticated or has the resources to acquire professional guidance. It could well be unreasonable for banks to use contracts of adhesion to impose an exacting 14-day limit on unsophisticated customers, small family businesses, or individual consumers . . . ."<sup>11</sup>

One of the most interesting court opinions on letters of credit in 2014 was a wrongful dishonor decision in which the court held that the beneficiary satisfied the letter of credit independence principle and was entitled to payment, when the letter of credit required an authenticated SWIFT message from the bank con-

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6. See *Certificate of Title for Vessels Act (2011)*, Legislative Tracking, UNIF. L. COMMISSION, [http://www.uniformlaws.org/Legislation.aspx?title=Certificate of Title for Vessels Act](http://www.uniformlaws.org/Legislation.aspx?title=Certificate%20of%20Title%20for%20Vessels%20Act) (last visited May 8, 2015).

7. See *UCC Article 7 Amendments (2003)*, Legislative Tracking, UNIF. L. COMMISSION, [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC%20Article%207,%20Documents%20of%20Title%20\(2003\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC%20Article%207,%20Documents%20of%20Title%20(2003)) (last visited May 8, 2015).

8. See Jennifer S. Martin, *Sales*, 70 BUS. LAW. 1165, 1178–79 (2015).

9. See Edward K. Gross, Dominic A. Liberatore & Stephen T. Whelan, *Leases*, 70 BUS. LAW. 1183, 1183–85 (2015).

10. *Id.* at 1192–93.

11. See Stephen C. Veltri & Greg Cavanaugh, *Payments*, 70 BUS. LAW. 1197, 1208 (2015).

cerning the beneficiary's fulfillment of its commitment and the beneficiary presented a SWIFT message confirming receipt of a fully executed agreement.<sup>12</sup>

This year saw only a small amount of case law addressing Article 7, including one case that addressed the general Article 7 notice requirements for carrier's lien foreclosure sales and Article 1's allowed contractual variation of such notice requirements.<sup>13</sup>

One of the most interesting developments in securities law involved the overruling, via statute, of a rather notorious New York Court of Appeals case in which the court held that eight promissory notes were securities under section 8-102's registrability criterion. Though the issue has been clarified in the official comments to section 8-102, a non-uniform amendment was needed in New York to counteract the ruling of the state's highest court.<sup>14</sup>

While the amendments to Article 9 targeted specific commercial law issues, there were judicial decisions on others that continue to challenge lenders. One notable case took up the issue of a couple's guarantee of the debts of two limited liability companies ("LLCs"), finding that the couple had not granted a security interest in their personal assets where the security agreement indicated they signed as members of the LLCs, rather than in their individual capacities, even though other documents indicated otherwise.<sup>15</sup>

The survey of cases under the United Nations Convention on International Sales of Goods ("C.I.S.G.") covered cases in 2013 and 2014. One notable case addressed whether parties who fail to raise the application of the C.I.S.G. waive their right to apply its provisions, finding that a six-year delay in raising its application by an importer/distributor would be prejudicial to the manufacturer owing to the significant differences in some of the applicable provisions, including the parol evidence rule and statute of frauds.<sup>16</sup>

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12. See James G. Barnes & James E. Byrne, *Letters of Credit*, 70 Bus. Law. 1219, 1220–21 (2015).

13. See Anthony B. Schutz, *Article 7: Documents of Title*, 70 Bus. Law. 1229 (2015).

14. See Carl S. Bjerre, *Investment Securities*, 70 Bus. Law. 1233, 1238–41 (2015).

15. See Steve Weise & Stephen Sepinuck, *Personal Property Secured Transactions*, 70 Bus. Law. 1243, 1248–49 (2015).

16. See Kristen David Adams & Candace M. Zierdt, *International Sales of Goods*, 70 Bus. Law. 1269, 1271 (2015).