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# Scope, Purposes, and Functions of the Uniform Commercial Code

By JAMES B. YOUNG\*

As Chairman of the Kentucky State Bar Association Committee for the Uniform Commercial Code, it is, of course, a source of pleasure for me that the committee's efforts have been fruitful and that the Code has now been accepted in Kentucky as the committee has always hoped it would be—a valuable working tool implementing the commerce of our state and of the nation.

When I am confronted with the question, "What is the Uniform Commercial Code?", the thing that first comes to my mind is the initial meeting of our committee on September 6, 1955. It was our job to study the Code and make recommendations as to its adoption in Kentucky. We had had a glance at the 1952 official draft consisting of 816 pages, and supplement number 1, consisting of 189 pages. We devoted most of the first meeting to a discussion of how we could get someone to do the job for us. In other words, we recognized immediately that we had a bear by the tail and we were looking for help.

I write this in no sense of apology. To the contrary, the Code represents the end result of the best legal minds in this country. It is not a haphazard collection of statute and case law, nor is it a theoretical legal venture into unknown and untried areas.

The Code is the answer to a concept—that "commercial transactions" is a single subject of the law notwithstanding its many facets. Now, a single transaction may very well involve a contract for sale, followed by the sale, the giving of a check or draft for part of the purchase price and the acceptance of some form of security for the balance. The check or draft may be negotiated and may ultimately pass through one or more banks for collection. If the goods are shipped or stored, the subject

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matter of the sale may be covered by a bill of lading or warehouse receipt or by both. On the other hand, it may be that the entire transaction was made pursuant to a letter of credit either domestic or foreign. Obviously, every phase of commerce involved in the above example is but a part of one transaction, namely, the sale of and payment for goods.

Thus, the Code seeks to collect, codify, and make available in one *integrated* work, the entire body of commercial law.

By the same token, the Code seeks *uniformity*. When you consider that we now have fifty legislatures grinding out laws at a tremendous rate of speed on all phases of the above transaction, the need for uniformity is at once obvious. With uniformity comes *predictability*—predictability as to what the law is in a particular multi-state situation.

So there is a genuine need for the Code.

In 1940, there were nine uniform acts in existence relating to commercial transactions. Kentucky had adopted three of them; the Uniform Negotiable Instruments Law, the Uniform Warehouse Receipts Act, and the Uniform Sales Act. (Later, Kentucky adopted the Uniform Stock Transfer Act.)

It was in that year, 1940, that William A. Schnader, then president of the National Conference of Commissioners on Uniform State Laws, proposed that the Conference abandon the practice of sponsoring piece-meal legislation and prepare a commercial code. The Conference accepted the challenge and invited the American Law Institute to join in the undertaking. The two sponsors then organized for the task by appointing a joint editorial board with Judge Herbert F. Goodrich of the United States Court of Appeals for the Third Circuit as chairman.

Since then, the amount of time and work devoted to this project, most of it without pecuniary compensation, has been truly fantastic. In addition to the official drafting committee, committees of the American Bar Association, state bar associations, and business groups such as the American Bankers Association have worked on the project. Industry also joined in, and these groups advised, criticized, and influenced the work.

Despite the fact that most of the work was done without compensation, such a project needed financing. The Maurice and Laura Falk Foundation of Pittsburgh made grants of \$275,000

and an additional \$100,000 or more was contributed by business and financing concerns and by law firms.

By 1952, an official draft of the Code was promulgated. A bill containing this draft was passed in Pennsylvania in 1953;<sup>1</sup> and that state became a laboratory for the Code. Out of its experience has come valuable improvements.

In 1955, Supplement Number 1 was issued amending various sections, and during 1956, the entire Code was reconsidered in the light of various state agencies and private groups who had undertaken exhaustive studies of the Code. The result of this revaluation was the publication of the 1957 Official Edition,<sup>2</sup> on which Kentucky's Code is based.<sup>3</sup>

I hope this brief outline of the history of the Code on a national level will give some idea of the magnitude of the work. It represents, so to speak, the evolution of commercial practices. It also indicates why the Kentucky State Bar Committee consisting of practicing lawyers, bankers, and judges sought help in its study of the Code.

Before leaving the national level, I might add that Massachusetts adopted the Code in 1957,<sup>4</sup> effective October 1, 1958, and Connecticut has now done likewise,<sup>5</sup> to be effective October 1, 1961. The list of states in which the Code is up for adoption is a long one (over fourteen in 1959). Needless to say, it is now well recognized that the Code is a "must" for any state that wishes to facilitate the handling of its commercial transactions and to keep abreast with modern commercial law.

Turning to the history of the Code in Kentucky, at the annual State Bar Meeting in 1954, Mr. Blakey Helm, who was one of the commissioners on Uniform State Laws from Kentucky, moved that the president of the Kentucky State Bar appoint "a committee to study the various phases of the proposed Uniform Commercial Code and to make recommendations with reference to the advisability of the adoption of the Code by the legislature."

Pursuant to this resolution, Mr. Oldham Clarke, who was then president of the Kentucky State Bar, appointed a committee

<sup>1</sup> Pa. Stat. Ann. tit. 12A (1954).

<sup>2</sup> A 1958 Official Text of the Uniform Commercial Code, with comments accompanying each section, has now been issued.

<sup>3</sup> Ky. Acts 1958, ch. 77, Legis. Research Comm'n Inform. Bull. No. 24 (1959).

<sup>4</sup> Mass. Ann. Laws, ch. 106 (Special Supp. 1958).

<sup>5</sup> Conn. Gen. Stat. tit. 42(a) (Supp. 1959).

consisting of Bart A. Brown, Robert K. Cullen, Robert E. Hatton, Edward R. Hays, Blakey Helm, Rufus Lisle, and James B. Young. Wilson W. Wyatt joined the committee in 1957. As I stated, at our first meeting we at once recognized that we would need help to carry out our duties. We were indeed fortunate to have the interest and splendid cooperation of Lt. Governor Waterfield, and with his help and that of the Governor, a joint resolution was presented to the General Assembly in January 1956, which authorized the Legislative Research Commission to undertake the work.

Thus began the study which has culminated in the Code becoming law in Kentucky. Dr. Orba F. Traylor was then executive assistant for the Legislative Research Commission and James Fleming was director of research, and their enthusiasm, cooperation, and interest was of prime importance. Most important of all, however, was A. L. Pisano, the individual who "took hold of the bear's tail" and brought the study of the Code to its present high level of attainment. I think that the book *Uniform Commercial Code. An Analysis of Effect on Existing Kentucky Law*,<sup>6</sup> is a just tribute to Mr. Pisano and constitutes prima facie evidence of a "genius at work." From that time on, the bar committee acted merely in an advisory capacity. Until November, 1957, Mr. Pisano devoted his entire time to the preparation and the study of the Code and his results were then published by the Legislative Research Commission.<sup>7</sup>

The more the committee worked with the Code, the more it became impressed with its scope and with its value, not only to the lawyer and the court, but to persons engaged in all phases of commercial life. The man with the bank account, the manufacturer, the retailer, the distributor, the trucker, the broker, the personal representative—all of these are persons who are dependent upon commercial law and who have a right to demand that such law be clear and concise, that it be stated, and above all that it be uniform. This should indicate the fact that the Code is *not* the product of any pressure group. In fact it is the result of a coordinated effort of individuals who recognize the need for uniformity. A letter from Mr. Leonard M. Slater of Boston, a member of the Code Committee of the Commercial

<sup>6</sup> Research Publication No. 49, Ky. Legis. Research Comm'n (1957).

<sup>7</sup> *Ibid.*

Law League, speaks of the coordinated effort in Connecticut and how the bar, labor, banks, and individual members of the legislature achieved success through their joint efforts. Such was also true in Kentucky.

In November, 1957, the Committee met and made its report to the Kentucky Bar Association, recommending the adoption of the Code by the legislature. The bill was prepared and passed both houses without a dissenting vote—something of a record in Kentucky—and the Governor signed the bill on March 28, 1958.<sup>8</sup> This brings us down to the present. On July 1, 1960, the Code will go into effect.

The Code itself is organized into nine articles. Each article is broken down into parts, and each part into sections. These articles cover every conceivable form of commercial transaction. Thus, it will no longer be necessary to read the various and disconnected sections of the Kentucky Revised Statutes that might pertain to a given problem. A lawyer will find the problem in which he is interested in the Code and with ample cross-references.

Article 1 of the Code covers the title, the construction, the application, and subject matter of the Act. Article 1 is subdivided into only two parts. Part 1 has nine sections, and Part 2 has eight sections.

Part 1 of Article 1 pertains to the purposes of the Code, the construction to be given it, the territorial application of the Code, etc. Part 2 deals with general definitions and principles of interpretations.

There are five sections of Article 1 that should be noted at this point.

*Section 1-102.* The purposes of the Code are set forth in section 1-102. They are to simplify, clarify, and modernize the law governing commercial transactions; to permit the continued expansion of commercial practices through custom, usage, and *agreement of the parties*; and to make uniform the law among the various jurisdictions. I cannot overemphasize the phrase "agreement of the parties," for it will be used time and time again throughout this symposium on the various articles of the Code. The Code ensures *freedom of contract*, that is, the right of the

<sup>8</sup> See note 3 *supra*.

parties to make their own agreement in their own words. The Code looks to the substance of the commercial transaction regardless of form and attempts to carry out what the parties in good faith intended.

*Section 1-105(1)*. This section grants the right under certain circumstances to *select the forum* by providing that "when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties."

This provision is in *keeping* with subsection (B) of Section 1-102, noted above, which is designed to permit the continued expansion of commercial practices through agreement of the parties. Thus, the parties are given this additional freedom of contract in a multi-state transaction.

*Section 1-107*. This section contains an innovation for it provides any claim or right arising out of an alleged breach may be discharged by a written waiver or renunciation without consideration. This is a radical departure from our previous conception that a release, in order to be effective, must be based upon consideration of some sort.

Of course, both of these sections, 1-105, dealing with the right of the parties to choose the forum, and 1-107, whereby an aggrieved party can, without valuable consideration, renounce or waive a valuable right, are subject to section 1-203, which provides that every contract or duty within the Code imposes an obligation of good faith in its performance or enforcement. There is nothing particularly new about this requirement of good faith, but it does afford some comfort to have it stated so succinctly and to know that it is always present.

*Section 1-206*. Another section that should be noted is 1-206, which provides that a sale of personal property is not enforceable beyond \$5,000 unless there is some writing covering the transaction. This statute-of-frauds provision does not apply to Article 2 (sales) or Article 8 (investment securities) or Article 9 (secured transactions), all of which have statute-of-frauds provisions of their own. Section 1-206 merely covers any sale not otherwise provided for and fills a gap in the Code and is in addi-

tion to the present statute of frauds in Kentucky Revised Statutes section 371.010.

*Section 1-207.* Almost every lawyer has had one or more of the following questions presented to him by a client: *X* has breached his contract, and I have the goods in the warehouse, what shall I do?; *X* has sent me the wrong goods, but I can use some of it. What shall I do? We are half through *X*'s contract, and *X* has changed the specifications; we have completed the contract, but *X* will not pay. Section 1-207 allows the client to go forward and do whatever is necessary under the circumstances without affecting his right to complain of the other party's breach. The section reads as follows:

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as 'without prejudice', 'under protest' or the like are sufficient.

It must be remembered that the Code is an integrated body of law. No part of it can be said to be unimportant. Article 1, although it concerns itself with general definitions, forms an important background for the remaining articles. Thus all of the sections in Article 1 should be thoroughly read and digested.

One of the great advantages of the Code is that it fills in blank areas of the law where we have had no decisions or statutes. This is true in the field of bills of lading, investment securities, letters of credit, bulk sales, and, to a high degree, in secured transactions. Many of these matters are discussed in the various articles in this symposium.