Symposium: The Uniform Commercial Code--A Third Look

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The Uniform Commercial Code—
A Third Look?

Robert Braucher

The Uniform Commercial Code now has been enacted in eighteen states, and its sponsors are looking forward to further enactments during 1963 legislative sessions. Originally proposed in 1940, the Code was approved in 1951 by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and the American Bar Association. In 1956, after it had been enacted in only one state, Pennsylvania, it was subjected to a comprehensive re-examination and revision in the light of critical comment, particularly the 1956 report of the New York Law Revision Commission. That report also pointed out the need for periodic study and revision. Thus in 1961 the sponsors took steps to create a Permanent Editorial Board to consider proposed amendments and, subject to approval by the sponsors, to approve and promulgate amendments when:

'(a) It has been shown by experience under the Code that a par-

1. The enacting states, in chronological order by year of enactment, are as follows:

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<th>State</th>
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<td>Ky.</td>
<td>1958</td>
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<td>N. H.</td>
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ticular provision is unworkable or for any other reason obviously requires amendment; or

'(b) Court decisions have rendered the correct interpretation of a provision of the Code doubtful and an amendment can clear up the doubt; or

'(c) New commercial practices shall have rendered any provisions of the Code obsolete or have rendered new provisions desirable."

The purpose of this article is to outline and discuss some of the problems facing the Permanent Editorial Board, which held its first meeting in May of 1962.

THE NEED FOR A THIRD LOOK

Most of those who took a leading part in the formulation of the Code seem to have a continuing pride in the product. As in any collective effort, there were differences of view which were resolved by discussion, by compromise, and by vote; and probably no one person has agreed with every decision made. Thus, the late Professor Llewellyn, the chief draftsman of the Code, complained that his own efforts,

\[\ldots\] successful for a while, to reintroduce the 'current course' idea into the Uniform Commercial Code article on commercial paper stirred up a witch hunt almost like that of Brandeis against \textit{Swift v. Tyson},\[6\]

and that the witch hunt was successful. He further stated, "But it is plain that I could not be less convinced of error."\[7\] But neither he nor lesser participants have shown much disposition to seek a reversal of such decisions once the issue has been fully discussed and resolved.

On the other hand, a number of participants, and many people who did not participate in the original drafting or the 1956 revision, now have had extensive experience in applying Code provisions to problems arising in teaching, in office practice, and in litigation. There are those who believe that on the basis of such experience, particularly in the field of chattel security, the Code provisions now could be reorganized and recast in a simpler, clearer, and more useful form. The prevailing view at the moment seems to be that any thoroughgoing revision should await more widespread enactment and the development of experience.

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5. 1961 \textit{Handbook of the National Conference of Commissioners on Uniform State Laws} 165, 166.


7. \textit{Id.} at 420.
under the Code in such important commercial states as Ohio and Illinois. In any event, any structural revision would be extremely dangerous if it were accomplished in a hurry, without adequate time for circulation, discussion, and critical comment. Not nearly enough time was available for this task before the legislative sessions of 1963, and the Editorial Board was faced with more than enough immediate problems in connection with the preparation of bills for 1963.

Comprehensive revision thus seems to be some years away. But it would seem desirable that preparatory review should begin soon.

The Immediate Problem for 1963

The Editorial Board has appointed three sub-committees: one on General Provisions, Sales, Bulk Transfers, and Documents of Title; a second on Commercial Paper, Bank Deposits and Collections, Letters of Credit, and Investment Securities; and a third on Article 9 — Secured Transactions. Their initial project will be to review the statutory variations, perhaps 300 in number, in the eighteen present Code states. It is doubtful whether they will be able to accomplish much more than this in time for 1963 legislative sessions, but they will undoubtedly attempt to review numerous amendments which have been proposed in New York, California, and Wisconsin. The New York amendments, especially those which were embodied in the Code as enacted in New York, have particular significance because of the importance of New York as a commercial center and the standing of those who proposed them.

New York bankers and their counsel were for a long time the most effective opponents of the Code, and their influence was felt in other states as well as in New York. Their objections led to the most comprehensive review of the Code, undertaken by the New York Law Revision Commission in 1953, and they were active and vocal opponents at the public hearings held by that Commission. Their views had a substantial impact on the 1956 report of the Commission and on the Code revision which followed. In 1960 the New York legislature appropriated funds for the preparation of annotations to the Code, and subcommittees of New York Bar Associations and of the New York Clearing House Association undertook to study the Code as revised. The Clearing House study was particularly thorough and resulted in a report proposing some sixty-nine changes in the Code, thirty-nine of which were styled “changes essential to the Code.”


Early in 1962 members of a subcommittee appointed by the sponsors' Permanent Editorial Board met with representatives of the Clearing House Association, the New York Commissioners on Uniform Laws, and legislative and executive officials of the state. After extended and sometimes heated discussion, a Code bill was introduced which incorporated a number of non-uniform amendments. The Clearing House Association repeated some of its remaining objections at a joint hearing of the New York Senate and Assembly Judiciary committees, but later withdrew its unresolved objections and supported the bill. After the bill was enacted, representatives of the Clearing House Association were invited to serve on the subcommittees of the Editorial Board. These subcommittees will undoubtedly report on the Clearing House proposals, both those reflected in the New York bill and those not so reflected.

Types of Amendments Proposed

As indicated, structural changes in the Code, involving change in section numbers or reallocation of subject matter between sections, are unlikely to be recommended this year. Stylistic amendments within sections are also likely to be resisted unless a section is amended in some other respect as well. When such amendments and what seem to be typographical errors are eliminated, the list of enacted variations in the eighteen Code states shrinks to a manageable size. For example, Ohio saw fit to invite confusion by renumbering and rearranging sections and also by omitting provisions for short titles and a severability clause. Various other states omitted section captions and a provision that they are part of the Code. The subcommittees can be confident that the Editorial Board will not recommend such aberrations for uniform adoption.

Three other types of amendments, though they may be regrettable, pose no problem for the national sponsors. First, some amendments are designed to meet a purely local situation, such as a pre-existing statute or rule of law. Thus Massachusetts and Ohio omitted section 1-102(5), relating to number and gender, apparently because the matter is adequately covered in other statutes. Local, in a somewhat different way, is a provision added to section 9-109(3) in Massachusetts and Rhode Island: "'Crops' include oysters on leased, licensed or owned beds." Second, some amendments simply embody a reversal of a controversial Code policy which has been fully debated many times. Thus the 1961 California bill included an amendment to section 2-403, designed to deny

protection to a buyer in ordinary course from a dealer in watches where
the watch had been left with the dealer for repair, rather than with a
view to sale.\textsuperscript{10} Third, amendments which do not clarify have sometimes
been made for the purpose of clarification. An example is the Massa-
chusetts insertion in sections 7-210, 7-308, and 9-507 of language adapted
from section 2-704(2): validation of foreclosure sales was limited by
the words "... in good faith for the purposes of avoiding or reducing loss
and of effective realization ... .", a wholly unnecessary gloss on the
general requirement of good faith in enforcement laid down by section
1-203.\textsuperscript{11}

Amendments of these three types are likely to result from the fact
that a small group or even a strategically-placed individual can some-
times prevent the enactment of a massive piece of legislation like the
Code. A threat of sabotage may make it necessary for the proponents
to consent to unsound amendments in order to obtain enactment. On
the one hand, the Editorial Board is unlikely to approve such amend-
ments unless they have general application and either some merit not
previously rejected or a political appeal which justifies reconsideration.
If these conditions are met, on the other hand, the Editorial Board is
authorized to act: a 1962 amendment to its charter permits approval of
amendments, after investigation, if they would lead to wider enactment
of the Code and are likely to be accepted in the eighteen Code states.

The remaining types of amendments are those with which the Edi-
torial Board will be primarily concerned. First and easiest is the cor-
rection of obvious error. Second is the resolution of ambiguity disclosed
by judicial decision. Third is the recognition of new commercial prac-
tices or other developments since the Code was promulgated. Finally,
the most difficult questions will relate to old controversies on which
new light is claimed to have been shed. The balance of the present
discussion will deal with specific points which may be thought to fall
in one of these classes. Attention will be directed particularly to articles
1, 2, 6, and 7, since the writer has undertaken some responsibility for
the study of these articles.

\section{ARTICLE 1 — GENERAL PROVISIONS}

\subsection*{Section 1-201(27): Notice to an Organization}

The Code distinguishes between notice, notification, receipt of a
notification, and knowledge.\textsuperscript{12} The "witch hunt" against Professor Llew-

\textsuperscript{10} Compare Commercial Credit Corp. v. Stan Cross Buick, Inc., 180 N.E.2d 88 (Mass. 1962)
(pre-Code law), with Independent News Co. v. Williams, 293 F.2d 510 (3d Cir. 1961).
\textsuperscript{11} Cf. In the Matter of the Estate of Kiamie, 309 N.Y. 325, 130 N.E.2d 745 (1955)
("good faith" before the Code).
\textsuperscript{12} UCC § 1-201(25)-(27); cf. UCC §§ 3-304, 8-304.
ellyn's reintroduction of the “current course” concept was finally successful in eliminating references to “reasonable commercial standards” from the general definitions of “good faith” and of “holder in due course,” but related objections to the use of an “objective” standard of notice were met only in part in the 1956 revision and were renewed in 1961.\footnote{18}

Under both the Uniform Negotiable Instruments Law and the Code, a holder in due course takes a negotiable instrument free of personal defenses and adverse claims, and under both statutes holding in due course is limited to one who takes “without notice” of defenses or claims. But Uniform Negotiable Instruments Law section 56 equates “notice” for this purpose to “actual knowledge” or “knowledge of such facts that his action in taking the instrument amounts to bad faith;” under the Code “notice” includes “reason to know” and receipt of a notification as well as “knowledge.” Moreover, Code section 1-201(27) provides:

> Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence.

The New York Clearing House Association asserted that these provisions would substitute a standard of “due diligence” for the “subjective” standard of the Uniform Negotiable Instruments Law sometimes called “the rule of the pure heart and the empty head” or “a simple test of good faith and honesty in fact.” Ignoring a sentence added to section 1-201(25) in 1956, “The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act,” the Clearing House Association also adverted to the problem of “forgotten notice,” and asserted that the Code concept of notice would require a business organization of any size to make an extensive investigation before purchasing commercial paper or investment securities.\footnote{14}

The Clearing House objection seemed to relate primarily to the purchase of negotiable instruments, and it was met in the New York Code, not by an amendment to the general definitions in article 1, but by the addition of new subsections to sections 3-304 and 8-304, relating to holding in due course of commercial paper and bona fide purchase of investment securities. The new subsections first substantially re-


\footnote{14. CHA Report 18 (1961); cf. First Nat'l Bank v. Fazzari, 10 N.Y.2d 394, 179 N.E.2d 493 (1961) (estoppel to assert that notice was forgotten).}
enacted Uniform Negotiable Instruments Law section 56; a second sentence then provided for organizations:

If the purchaser is an organization and maintains within the organization reasonable routines for communicating significant information to the appropriate part of the organization apparently concerned, the individual conducting the transaction on behalf of the purchaser must have the knowledge.15

These New York amendments left untouched the numerous other situations in which Code rules turn on the receipt of notice, knowledge, or a notification. If a satisfactory verbal formula can be found, the Editorial Board will probably have to consider whether it should be inserted in the general provisions of article 1. The New York formula provides a suitable gloss on one aspect of "due diligence" in communication within an organization, the maintenance of communication routines, but it seems to dispense with any requirement that the routines be followed in the particular case. A requirement of reasonable compliance with the routines should probably be added, and guidelines may be needed to distinguish the information which should be circulated within an organization from that which need not be. But such attempts to make more precise the "due diligence" required are likely to result in inordinate expansion of the Code text.

Concern over this problem is not peculiar to New York. The California Bankers Association recommended that all duty of inter-branch communication be eliminated, and the 1961 Code bill in California limited the duty to cases where the individual receiving information "is aware of the transaction" in another branch which might be affected. Like the New York Code, the California bill also amended section 4-106 to negate imputation of notice from one branch to another with respect to bank deposits and collections. Such provisions have statutory precedent in California.16 But the California case principally relied on as negating imputation of notice between branches simply applies a California statute imputing notice of what an agent or principal "...ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other."17

An Ohio case points up the problem. In Davis v. Commercial Credit Corporation18 a "fly-by-night" contractor had defrauded buyers of asbestos siding in Pennsylvania and had discounted their notes with the Pennsylvania subsidiary of a national finance company. Later, the same contractor engaged in similar practices in Ohio and discounted the notes

15. N.Y. UCC §§ 3-304(7), 8-304(3).
16. CAL. FIN. CODE §§ 991, 1012(c), 1018.
18. 87 Ohio App. 311, 94 N.E.2d 710 (1950).
with a different subsidiary. By virtue of the common parent and supervision by the same division manager it was held that customers' complaints brought home to the second subsidiary knowledge fatal to its status as holder in due course. The case may be explained as part of a trend toward denial of holder in due course status to purchasers of consumer paper, but on its face the opinion rests on a standard of diligence in internal communication which may well be quite impracticable in a large organization.

It seems unlikely that the Editorial Board will adopt the New York or California proposal or otherwise approve any drastic narrowing of the duty of internal communication in a large organization. Our tradition is strongly against a rule "... that great business houses are held to less responsibility than small ones," or that special treatment for the large organization is required "... by the largeness of its dealings and its having to employ agents to do what if done by the principal in person would leave no room for doubt." Nor does it seem desirable to lay down a relaxed general standard for branch banks, since other types of organizations have similar problems and since the problem of internal communications may be just as difficult within a single skyscraper. But in the interest of the security of commercial transactions it may be proper to negate a standard of notice or knowledge based on "... piecing together all the facts known to different employees . . . ."

**Article 2 — Sales**

***Section 2-318: Third Party Beneficiaries of Warranties***

The 1950 draft of the Code provided for impleader in warranty actions and for a direct action against any person subject to impleader. It also extended warranty protection . . . to any natural person who is in the family or household of the buyer or who is his guest or one whose relationship to him is such as to make it reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty . . . .

Representatives of affected industries protested vigorously, and in

19. *Cf. UCC § 9-206(1) and comment 1.
21. *Id.* at 535.
the Code as promulgated the impleader and direct action provisions were omitted and the class of statutory beneficiaries was restricted.

Section 2-318 as promulgated extended a seller's warranty only

... to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty . . . .

A reference to employees of an industrial consumer was deleted from the comment, and a statement was inserted that beyond those expressly included

... the section is neutral and is not intended to enlarge or restrict the developing case law on whether the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain.26

In the succeeding years the requirement of privity in warranty cases has been steadily eroded, and in many jurisdictions the "developing case law" has given the benefit of warranties to persons not included in the Code language.27 In New York, long one of the citadels of privity, the court of appeals first adopted by judicial decision the rule laid down in section 2-318,28 and then went well beyond it.29 In New York, and many other jurisdictions, it is now clear that beneficiaries of a warranty are not restricted to natural persons, much less to family, household, and guests of the buyer, and that beneficiaries are not limited to personal injury claims.

When the Code was enacted in Wyoming, section 2-318 was amended to extend a seller's warranty "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."30 The 1961 California bill simply omitted section 2-318 on the ground that it would be "a step backward" from the existing California law.31 These events may indicate that it is time for the Editorial Board to promulgate a more progressive formulation, at least as an alternative for adoption in states where the require-

26. UCC § 2-318 comment 3.
27. See RESTATEMENT (SECOND), TORTS § 402A (Tent. Draft No. 7, 1962); Dickerson, Recent Developments in Food Products Liability, 8 PRAC. LAW., No. 4, p. 17 (April 1962); Prosner, Assault upon the Citadel (Strict Liability to the Consumer), 69 YALE L.J. 1099 (1960). But see Condon, Developments with Respect to Product Liability, 17 FOOD DRUG COSM. L.J. 195 (1962).
ment of privity has been abandoned. The Wyoming formulation seems acceptable for this purpose.

Section 2-702: Seller's Remedies on Discovery of Buyer's Insolvency

Section 2-702(2) codifies and limits the right of a seller to reclaim goods from an insolvent buyer who has misrepresented his solvency or his intent to pay. Subsection (3) subjects the seller's right to reclaim "... to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (Section 2-403)." Section 2-403 provides as to lien creditors only that their rights are governed by articles 6, 7, and 9, and those articles seem to contain no relevant provisions except section 9-301(3), defining "lien creditor" to include an attaching or levying creditor, an assignee for benefit of creditors, a trustee in bankruptcy, or a receiver in equity.

In In re Kravitz the court ruled that the effect of these confusing cross-references was to refer the problem of conflict between the reclaiming seller and trustee in bankruptcy to the Pennsylvania law prior to the Code. Under that law a lien creditor who extended credit subsequent to the sale prevailed over the defrauded seller. The trustee in bankruptcy was given the status of an "ideal lien creditor" by the Bankruptcy Act and, therefore, also prevailed over the seller. Thus the right of reclamation granted by section 2-702 was ineffective in the principal situation where it might be useful.

In many states the pre-Code law would seem to allow a defrauded seller to reclaim against an attaching creditor, regardless of when credit was extended. But there seems to be no good reason for leaving the matter to pre-Code law. Accordingly, the words "or lien creditor" were deleted from section 2-702(3) as enacted in Illinois, New Mexico, and New York, and as proposed in California. It would seem appropriate for the Editorial Board to approve that change.

ARTICLES 3, 4, AND 5

The New York Clearing House Association proposed a substantial number of amendments to the Code articles on Commercial Paper, Bank Deposits and Collections, and Letters of Credit, and several changes were

32. Cf. California Conserving Co. v. D'Avanzo, 62 F.2d 528 (2d Cir. 1933).
34. 278 F.2d 820 (3d Cir. 1960); see Hawkland, Relative Rights of Lien Creditors and Defrauded Sellers — Amending the Uniform Commercial Code to Conform to the Kravitz Case, 67 COM. L.J. 86 (1962).
made in the New York Code in response to those proposals. Those changes have been the subject of recent published discussion, and it is sufficient here to list those which seem most likely to receive attention. These include changes in sections 3-105 and 3-112 to preserve the negotiability of note forms in common use, amendment of section 3-122 to negate the running of interest before demand on instruments such as a certified check, deletion of “continental” from the phrase “continental United States” in section 3-412 and 3-504 to take account of the statehood of Hawaii and Alaska, and provision in section 3-415 for war- 

garanties by an accommodation indorser.

More significant are two proposals to take account of developments in banking practice: a new section 4-109 to define the “process of posting,” and changes in sections 3-504 and 4-204 to authorize presentment of items to electronic processing centers. The important problem of notice to an organization has been discussed previously; it may involve some change in section 4-106 regarding branch banks. Finally, the New York amendment regarded as the most significant by the Clearing House Association makes article 5 inapplicable to any letter of credit which

... by its terms or by agreement or by custom [is] subject in whole or in part to the Uniform Customs and Practices for Commercial Documentary Credits fixed by the Thirteenth or by any subsequent Congress of the International Chamber of Commerce . . . .

ARTICLE 6 — BULK TRANSFERS

The Bulk Transfers article of the Code has been substantially re- 
written in California on the theory that uniformity is not essential in this field. The effect of the California changes is to preserve pre-existing California law. Three major departures from the Code are (1) coverage of bulk transfers for security, (2) substitution of a single recorded and filed notice for individual notices to creditors, and (3) a longer statute of limitations. The Editorial Board is not likely to adopt any of these changes.

Outside California, article 6 seems not to have been too trouble- 
some. Changes in five sections seem worthy of consideration, but all are minor technical changes. Section 6-103 provides for “public notice” in two situations without specifying detail, and a Georgia amendment enacted as section 6-106 would add precision. Section 6-104(2) was

36. See Penney, supra note 8. See also forthcoming discussion by the writer in the Rutgers Law Review dealing with the New York changes in article 3.

37. See Clarke, Electronic Brains for Banks, 17 BUS. LAW. 532, 539-40 (1962); Funk, Presentment under the Uniform Commercial Code — A Reply to Mr. Clarke, 17 BUS. LAW. 548 (1962).

38. N.Y. UCC § 5-102(1).

amended in New York to provide that only the indenture trustee need be listed as a creditor in a case involving an issue of bonds or debentures. Optional section 6-106, providing for application of purchase money to the transferor's debts, has been enacted in Georgia, Kentucky, New Jersey, Oklahoma, and Pennsylvania; it could well provide for payment into court in the event of dispute as to distribution. Finally, "registered mail" in sections 6-107(3) and 6-108(3)(b) could well be changed to "registered or certified mail."  

ARTICLE 7 — DOCUMENTS OF TITLE

The Code provisions on Documents of Title have been revised in California, largely at the instance of the California Warehousemen's Association. The revision seems to be continuing, and the problems raised seem not to have troubled other states. The only change which now seems ripe for consideration by the Editorial Board is a provision for certified as well as registered mail in section 7-210(2)(b).

ARTICLE 8 — INVESTMENT SECURITIES

Recent discussion of the New York changes in article 8 need not be repeated here. The Editorial Board will have to consider a provision that securities are "fungible" in section 8-105, a provision for the seller's action for the price in section 8-107, modification of section 8-202(5) concerning "when, as and if issued" contracts, redefinition of the warranty of "proper form" in section 8-208, the question whether a broker can be an "intermediary" under section 8-306(3), and the clarification of section 8-313(2) regarding the status of a broker as a holder. The most interesting New York variation in article 8 is a new section 8-320 authorizing a central depository and clearance system like the one which the New York Stock Exchange has been conducting for several years as a pilot operation.

Fiduciary Security Transfers

An important problem for the Editorial Board is the relation of the Code to the Uniform Act for the Simplification of Fiduciary Security Transfers. The Uniform Act was promulgated in 1958 and has been enacted in thirty-five states and the District of Columbia. Shortly after

43. See note 36 supra.
44. See Braucher, Security Transfers by Fiduciaries, 43 Minn. L. Rev. 193 (1958).
its promulgation conforming amendments were made in the Code. But no effort was made to conform the terminology of the two statutes, and there are at least three minor differences of substance between them. Accordingly, the writer suggested in 1958 that "as an esthetic matter" it might be desirable to provide that in the event of conflict the Uniform Act prevailed.\textsuperscript{45} Proponents of the Code have since adopted this policy for states which enact the Code subsequent to the adoption of the Uniform Act, and it has been followed in Illinois and New York.

In 1959 Mr. Christy, the author of the standard treatise on the transfer of stock, prepared a set of recommended rules for the New York Stock Transfer Association.\textsuperscript{46} Under these rules simplified transfer procedures would be followed if either the Code or the Uniform Act or a similar but earlier Model Act were in force in the state of incorporation, the state of the transfer agent, and the state of the trust or estate. A few transfer agents, however, are reported to have refused to recognize the Code as a sufficient basis for simplification.\textsuperscript{47} Moreover, New Jersey and Connecticut repealed the Uniform and Model Acts, respectively, when they enacted the Code, and several other states have enacted the Code subsequent to the adoption of the Uniform Act without providing expressly for the resolution of possible conflicts. Not unnaturally, the result has induced some dissatisfaction on the part of those who have worked long and hard on the simplification of fiduciary security transfers.

One solution is the saving clause for the Uniform Act. There seems to be some prospect that New Jersey will re-enact the Uniform Act with such a saving clause before the Code takes effect January 1, 1963. But for the long run, the solution is to make the Code as universally acceptable among transfer agents as the Uniform Act now seems to be. Primarily the problem is an educational one, but it is the writer's belief that the Editorial Board should do its best to lay the ghosts which some transfer agents have associated with the Code.

Perhaps the principal such ghost is what may be called the Case of the Removed Fiduciary. If Simon Stockholder dies and Edward Executor duly qualifies as his executor, section 8-308(3)(d) provides that Edward Executor is an appropriate person to indorse Simon Stockholder's stock. The transfer agent under section 8-402 may protect itself by requiring a signature guarantee and a court certificate dated within sixty days before the date of presentation for transfer. If Edward Executor is removed as executor after obtaining the certificate but before he signs, his signa-
ture is like a forgery of Simon Stockholder’s name. Under sections 8-404 and 8-406 the issuer and transfer agent are then liable to Simon Stockholder’s estate, but under section 8-312(1)(b) they have recourse against the signature guarantor. This is the purpose of the signature guarantee, and issuers and transfer agents have been willing to take the risk of the insolvency of the signature guarantor. So far so good.

But now suppose that Edward Executor obtains registration of transfer into his own name as executor. Section 8-403(3)(a) says that the issuer may assume without inquiry that Edward Executor continues to be the fiduciary until the issuer receives written notice to the contrary. In such a case, according to comment 1 to section 8-404, the only necessary indorsement is that of Edward Executor as “...the person specified by the security... to be entitled to the security...” under section 8-308(3)(a). Hence the issuer, transfer agent, and signature guarantor are free of any risk in the event that Edward Executor had been removed before he indorsed the security.

Some transfer agents, however, are not satisfied to rely on a mere comment. If Edward Executor is no longer serving as executor, they say, section 8-308(3)(b) specifies “his successor” as the appropriate person to indorse, and that provision excludes signature by Edward Executor himself under section 8-308(3)(a). Thus there is a direct conflict between section 8-308(3)(b) and section 8-403(3)(a), and no principle is provided to resolve the conflict. This fear is strengthened somewhat by a typographical error in the comment to section 8-404, by which it refers to section 8-308(1)(a) instead of section 8-308(3)(a) as it plainly should.

In the judgment of the writer, this fear is not justified. But there is at least an ambiguity, and the Editorial Board should clear it up. Section 8-308(3)(b) should be amended to provide that, where stock is registered in the name of a fiduciary and the fiduciary ceases to serve as such, either the removed fiduciary or his successor is an appropriate person to indorse. This would harmonize with the Uniform Act and go far to reconcile opposing views which have held back the simplification movement. If Mr. Christy’s view could be made to prevail, only Hawaii, Iowa, Montana, and Vermont would lack effective simplification legislation.

**ARTICLE 9 — SECURED TRANSACTIONS**

The New York Clearing House Association proposed eleven changes in article 9 as “essential to the Code.” Only two changes were made in response to those proposals, but some of the others will undoubtedly be on the agenda of the Editorial Board. In addition, the New York
Code makes a series of innovations with respect to filing, at least one of which may prove suitable for uniform adoption. The significant problems with respect to article 9 are too complex for anything but mention here. First, certain of the choice-of-law rules in section 9-103, which turn on the debtor's chief place of business or on the office where he keeps certain records, are not entirely satisfactory where they refer the problem to the law of a foreign nation. Second, some provision should be made for changes in the location of the chief place of business or record-keeping office. Third, section 9-313 on security interests in fixtures badly needs some definition of fixture. Finally, section 9-401 on the place of filing would be improved if "residence" were given precision as applied to a corporation or partnership.


49. Cf. UCC § 9-401(3).
