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## Hart & Willier: Uniform Commercial Code Reporter-Digest

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## BOOK REVIEWS

**Uniform Commercial Code Reporter-Digest.** By Frederick M. Hart and William F. Willier. Albany: Matthew Bender & Co. 1965. Pp. xxii, 2410.

The Uniform Commercial Code has now been the operative law for more than ten years in Pennsylvania and for more than five years in Massachusetts and Kentucky. Experience with the Code has long since undermined the predictions of those who foresaw a bedlam of commercial confusion and litigation as the early consequence of enactment of so comprehensive a revision of commercial law. It is indeed remarkable that so many of the provisions which have engendered controversy in literature concerned with the Code remain relatively untouched by reported litigation. It is as true of the Code as it is of the Constitution, however, that its words mean what the courts say they mean, and the flow of judicial construction has become substantial in its quantity, significant in its impact, and accelerating in its pace.

The number of lawyers, judges, and law teachers who can discharge their professional responsibilities without some familiarity with the Code is diminishing dramatically. Accordingly, one would expect to find the Code, together with the Comments of the National Conference of Commissioners on Uniform State Laws and American Law Institute, included in practically every current collection of law books. The Comments serve very well in providing answers for most of the first wave of questions generated by the Code itself,<sup>1</sup> but the additional need for some special kind of service to enable the profession to keep up with the developments in the large area which the Code comprehends has been generally appreciated by publishers of legal materials. Professors Willier and Hart's *Uniform Commercial Code Reporter-Digest* appears to be an admirable response to this obvious need for a convenient and up-to-date means of access to the rapidly evolving case law.

Those familiar with Professors Willier and Hart's useful *Coordinator*, published in 1963, will wish to know how it relates to the *Reporter-Digest*. The *Coordinator* included no history and no coverage of state variations;<sup>2</sup> the *Reporter-Digest* does. The annotations which covered the case law of the first ten years of the Code, the main feature of the *Coordinator*, have been edited somewhat and carried over into the *Reporter-Digest*. The new work adds digests of 125 later cases,<sup>3</sup> and cross-references to four related works of the same publisher<sup>4</sup> and to relevant law review articles and comments.

<sup>1</sup> The Comments have of course been supplemented in the performance of this service by a voluminous literature and by innumerable institutes. As has been frequently observed, the Comments have also raised questions not presented by the text of the Code.

<sup>2</sup> Except for a Table of Filing Rules adopted by the several states as of the time of publication, which was appended to Mr. Haydock's study of the filing provisions of the Code.

<sup>3</sup> The Table of Cases lists 524 cases digested in the Annotations. Not surprisingly, most of these cases fall within Articles 2, 3 and 9 of the Code, with Article 2 accounting for approximately forty per cent of the cases digested.

<sup>4</sup> Coogan, Hogan & Vagts, *Secured Transactions Under the Uniform Commercial Code*, Vol. 1 (1963), Vol. 2 (1964); Collier, *Bankruptcy* (14th ed. 1964); Frumer & Friedman, *Products Liability* (1960); Willier & Hart, *Forms & Procedures Under the Uniform Commercial Code* (1964).

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Eleven articles of "selected commentary" on the Code, several of which are not published elsewhere, made up Part II of the *Coordinator*. Although there is no counterpart to these articles in the *Reporter-Digest*, the new work substantially supplants the *Coordinator*.

An obvious advantage of the *Reporter-Digest* over the *Coordinator* is that the new volume is in a loose-leaf binding. Indeed, it is entitled on its shelf-back, "Bender's Uniform Commercial Code Service." While the publisher has not announced how or when it will be kept up to date, the organization of the material as well as the construction of the book is well calculated to facilitate the addition of new annotations. The advantage it has over other services in being confined within two covers is probably temporary. Its sturdily constructed binding and 2410 pages already weigh over seven pounds, and when the annotators have to digest the commercial law output of the courts of forty-odd states and the federal courts sitting in them, a sizable expansion is inevitable.

The *Reporter-Digest* is divided into three parts: (1) Official Text, Drafting History, and State Variations of the Uniform Commercial Code; (2) Case Annotations and Comments, and References to Published Material; and (3) Indices and Tables.<sup>5</sup> It is an open book to those familiar with the organization and content of the Code. The drafting history, state variations, and comments thereon by the Permanent Editorial Board accompany the text of the section to which they pertain in Part 1, and the case digests and comments in Part 2 appear as annotations under the number and heading of the section principally construed. When several sections are involved, a citation to the case and the relevant headnote is set out under each of the sections with a cross-reference to the location of the principal annotation. Also listed under each section number and heading are references to the relevant textual material in the treatises and the periodical literature.

The case digests and accompanying editorial comments suggest comparison with a well-kept law school notebook for a course covering the Code, including briefs of all the cases and an edited version of class notes taken during a critical discussion of the cases. For those in a hurry, a topical phrase or series of phrases set out just below the citation of each case indicates the matters involved, and headnotes setting out the legal rulings delivered by the court are included.

The authors' comments are, I believe, a unique feature of this service and are, in any event, their most remarkable contribution. They undertake to explain and explore the implications of the courts' rulings, to expose fallacies, and to applaud sound results. The comments bristle with suggestions for counsel whose primary concern is to assist clients in developing a modus operandi under the Code and in avoiding missteps. The comments are also pressed into service for the cause of promoting uniformity of construction.

The virtues of the comments accompanying the case digests are well illustrated by the annotation to *Spurlin v. Sloan*,<sup>6</sup> where the Kentucky Court

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<sup>5</sup> Each part is separately paginated, the last pages of the three parts being 1-853, 2-1171 and 3-384 respectively. The Official Comments are not included.

<sup>6</sup> 368 S.W.2d 314 (Ky. 1963).

of Appeals rejected a garnishing creditor's attack on an unfiled assignment of a balance due his debtor on a construction contract. The court found no purpose to secure an obligation in the assignment and concluded that the filing requirements of Article 9 do not apply to an assignment liquidating or satisfying a debt. The comment approves the court's analysis of "account" and "contract right" under the Code but points out that the garnishing creditor failed to argue and the court therefore failed to recognize that Article 9 applies to sales of accounts as well as assignments for security. The comment then argues the case for the garnishing creditor, both as a matter of construction of the language of the Code and as a matter of commercial policy.<sup>7</sup>

The commentators are forthright in their condemnations<sup>8</sup> as well as their commendations<sup>9</sup> of the judicial opinions they consider. The tests they apply are those implicit in the Code itself and in the idea of a nationally uniform commercial law. The reader cannot expect to find all the judgments expressed in accord with his own preferences, but the value of the comments is not diminished by this lack of correspondence. Indeed, the comments exciting disagreement on the part of the reader are likely to be more useful than those merely confirming his own views. Thus the sharp queries posed by Professors Willier and Hart regarding the decision in *American Card Co. v. H. M. H. Co.*<sup>10</sup> have point for the user of the Service, quite irrespective of the user's views of the merits of the decision. The Rhode Island Supreme Court there ruled that a filed financing statement did not satisfy the requirement of a signed agreement imposed by section 9-203(1). The commentators ask how the court's rationale can be squared with Official Comment 4 to the relevant section, which recognizes the admissibility of parol evidence to show that an absolute bill of sale is actually part of a security agreement.<sup>11</sup> On the other hand, they have even less tolerance for the opinion of an inferior Pennsylvania court<sup>12</sup> excusing noncompliance with section 9-203 in a case where a creditor obtained possession of a certificate of title on which a lien was noted in the creditor's favor. The court's reliance on the Pennsylvania Vehicle Code as a basis for recognizing the validity of the security agreement is obviously subversive of the effort to achieve uniformity.

The editors fail to note the reversal of the district court opinion in *In re Laskin*,<sup>13</sup> which had excluded parol evidence to show the capacity in which an individual signed a note under a corporation's name. The comment accompanying the digest of the district court opinion notes that the provision

<sup>7</sup> Pp. 2-942 to -943.

<sup>8</sup> See, e.g., the crisp comments on *Wrightstone, Inc. v. Motter*, 11 Cumb. L.J. 165 (Cumberland County Ct., Pa. 1961), p. 2-335; *Uhr v. 3361, Inc.*, 21 D. & C.2d 348 (Philadelphia County Ct., Pa. 1960), p. 2-754. Compare the extended critique of *In re Kane*, 58 Lanc. L. Rev. 273 (Ref., E.D. Pa. 1962), pp. 2-1101 to -1105.

<sup>9</sup> See, e.g., the comment on *National Cash Register Co. v. Firestone & Co.*, 346 Mass. 255, 191 N.E.2d 471 (1963), p. 2-1117.

<sup>10</sup> 196 A.2d 150 (R.I. 1963).

<sup>11</sup> P. 2-980. For a more sympathetic view of the decision, see 25 U. Pitt. L. Rev. 619 (1964).

<sup>12</sup> *Mertz Estate*, 24 D. & C.2d 755 (Montgomery County Ct., Pa. 1961), digested and commented on at p. 2-977.

<sup>13</sup> 204 F. Supp. 106 (E.D. Pa. 1962), rev'd, 316 F.2d 70 (3d Cir. 1963).

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of the 1952 Code applied in the case (section 3-403(2)) had been changed in the 1958 Code so as to admit parol evidence in litigation between the immediate parties.<sup>14</sup> The editors miss the opportunity, however, to criticize the Court of Appeals for the Third Circuit for its conclusion that a bankruptcy court is vested by Section 57k of the Bankruptcy Act with a hovering power to apply equitable principles in acting on filed claims notwithstanding their validity under the Code. The error of arrogating to bankruptcy courts the power to develop a federal law governing the validity of claims against bankrupt estates is fully exposed in a note on the ruling of the court of appeals appearing in the pages of this Law Review.<sup>15</sup> The failure to exploit the occasion to criticize the appellate court's disregard of the Code seems explicable only as an inadvertence.

The effort to compress so much instructional and critical material within the time and space limitations imposed by the exigencies of providing the kind of service attempted involves inevitable risks of oversimplification and overgeneralization. Such an instance is found in the comment accompanying the digest of *Phelps v. Turner*,<sup>16</sup> a pre-Code case included because of its dictum that an after-acquired property mortgage found to be invalid under then-existing Kentucky law would be permitted by the Code. The commentators note that since the debtor had obtained a discharge in bankruptcy and since any security interest is "only security for a debt," the security interest could not be enforced even under the Code.<sup>17</sup> A discharge does not, however, disable a secured creditor to enforce his security interest in collateral held at bankruptcy and not avoided by the trustee in bankruptcy.<sup>18</sup> As *Local Loan Co. v. Hunt*<sup>19</sup> made clear, a debt does not survive discharge so as to enable a creditor holding a wage assignment to assert an effective lien against post-bankruptcy earnings. The *Phelps* case did not present the interesting question whether a perfected security interest in a shifting stock of merchandise can survive a discharge in bankruptcy of the debtor, but the question obtrudes from its facts and the *Digest* comment on it. If a security interest in after-acquired property may be viewed as one taken for new value rather than an antecedent debt under the circumstances spelled out in section 9-108 of the Code, the secured party may contend thereunder that his interest in such property can withstand attack by the debtor after discharge in bankruptcy as well as by the trustee in bankruptcy under section 60.<sup>20</sup>

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<sup>14</sup> P. 2-556.

<sup>15</sup> 5 B.C. Ind. & Com. L. Rev. 430 (1964).

<sup>16</sup> 351 S.W.2d 176 (Ky. 1961).

<sup>17</sup> P. 2-986

<sup>18</sup> Moore, Debtors' and Creditors' Rights: Cases and Materials 907-08 (1955).

<sup>19</sup> 292 U.S. 234 (1934).

<sup>20</sup> Cf. 1 Coogan, Hogan & Vagts, *supra* note 4, at 1082-91, 1161-91, 1391-1403. The commentators additionally observe in connection with *Phelps v. Turner*, *supra* note 16, that the plaintiff apparently waived his rights as a secured creditor by making a claim against the bankrupt estate. P. 2-987. The bankrupt had, however, transferred his interest in the mortgaged property before bankruptcy to his former partners. Unless this transfer was invalid, the chattel mortgagee would no longer be a secured creditor of the bankrupt. Bankruptcy Act § 1(28), 30 Stat. 544 (1898), as amended, 11 U.S.C. § 1(28)

A factor diminishing the long-range value of the work under review is the disproportionate space devoted to digests of and comments on lower court rulings from the Commonwealth of Pennsylvania. However, although their precedential weight is minimal, the instructive value of these rulings and of the comments thereon is not. Moreover, the general unavailability of these lower court opinions affords a special justification for digesting them in this work. At this stage the editors cannot be faulted for including all the extant judicial constructions of the Code. As the flood of relevant rulings rises, however, editorial discretion will have to be exercised in the allocation of time and space to routine rulings, particularly those of courts of lesser rank.

The *Reporter-Digest* comes equipped with numerous aids to facilitate use by those groping their way and by those in a hurry. There are the three indices—an index to the definitions in the Code, a general topical index to the sections of the Code, and an extended digest index of eighty-four pages. The latter was disappointing to me in use. The length is due in large part to the duplication under each index heading of the relevant headnotes as well as their location in the work. This feature is no doubt a time-saver, but the headings seem arbitrarily chosen.<sup>21</sup> If, as I hope, the *Reporter-Digest* is to be supplemented at intervals which keep it reasonably current, it may be wondered whether so pretentious an index of the digests is feasible or worth the effort to maintain.<sup>22</sup> So long as it is included, however, it supplements the other guides into the case-digests. A table of cases, the table of contents of the Code, and the cross-reference table to prior uniform acts will be the more typical means of access to the riches of this mine of material.

The work under review has rested within easy reach on my desk since its arrival there a couple of months ago. It has been consulted many times, and it has always given instant and valuable service. It is well that it is sturdily bound. I hope that the author-editors and publishers keep up the good work.

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(1964). Accordingly, he would waive no rights respecting his security by filing a claim. 3 Collier, *supra* note 4, at 299-300.

<sup>21</sup> Entries under the index heading "Sale of Goods" run for twenty pages of two columns each, and those under "Secured Transactions" run for thirty pages. Since the Digest Index carries no running heads at the tops of the pages, it is difficult to find one's way or to know when he has arrived. If the novice is patient and persevering, he may discover what he is looking for, but he is likely to conclude prematurely that there is no relevant case if he relies on the Digest Index. The three digests cited under the principal heading "Bankruptcy" are a small fraction of the digested cases involving an intersection of the Bankruptcy Act with the Code.

<sup>22</sup> The value of a good index to any reference work is nevertheless hardly to be exaggerated. Cf. Collison, *Indexes and Indexing* (1953); Spiker, *Indexing Your Book* (1954). The difficulties inherent in the indexing process have been dramatized by the efforts to make use of an electronic data retrieval system in legal research. See Lewis, *Phase Theory and the Judicial Process*, 1 Cal. Western L. Rev. 1, 21-26 (1965).