

Book Review

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Book Review

A Transactional Guide to the Uniform Commercial Code. By William D. Hawkland, and Chapter IV by William R. Klaus, Joint Committee on Continuing Legal Education of the A.L.I. and the A.B.A., Philadelphia, 1964. Pp. 1105, including Index.

The Uniform Commercial Code has now been adopted by more than forty jurisdictions in the United States. This considerable revision of our commercial law has caused some concern among practicing lawyers, who are often justifiably hesitant to rely on the plain words of a statute rather freely interpreted by judges in accordance with the judges' view of the applicable policy and the sense and need of the situation. Practitioners, therefore, understandably desire authoritative confirmation of statutory meaning.

The U.C.C. is an exceptionally well drafted document and deals with areas that have long been regulated by statute. Nevertheless, its meaning is not always immediately evident. Thus, the practitioner will certainly find analysis and rephrasing of the statute helpful. Of the many publications of varying quality now offering such analysis, *A Transactional Guide to the Uniform Commercial Code* is one of the more useful.

Until recently, about the only valuable writing in this field was a scattering of law review articles, *Banks and the Uniform Commercial Code*,¹ and the five Practice Handbooks.² Anderson's treatise³ was a disappointment, although its index was occasionally helpful. With the exception of the collection of Coogan, Hogan and Vagts on secured transactions,⁴ little thorough analysis of the Code is available outside the law reviews. Bunn, Snead and Speidel recently wrote a very readable, short introduction.⁵ *A Transactional Guide* offers an intermediate treatment. It is a fairly comprehensive introduction with substantial analysis.

The emphasis of *A Transactional Guide* is practical rather than theoretical. On the whole, the organization of the *Guide* is based on the statute, with each Article of the Code discussed separately. Despite its size, the *Guide* is essentially a condensed, brief work. The analysis is not always thorough and must be used with care and sense. The following examples of ambiguities or inaccuracies should not be

1. FUNK, *BANKS AND THE UNIFORM COMMERCIAL CODE* (2d ed. 1964), first published in 1953.

2. Published by the Joint Committee on Continuing Legal Education of the A.L.I. and the A.B.A. Two of these handbooks were written by William D. Hawkland.

3. ANDERSON'S U.C.C. (1961).

4. COOGAN, HOGAN AND VAGTS, *SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* (1963).

5. BUNN, SNEAD AND SPEIDEL, *AN INTRODUCTION TO THE UNIFORM COMMERCIAL CODE* (1964). The Uniform Commercial Code Handbook published by the A.B.A. Section of Corporation, Banking, and Business Law (1964) is a useful and unusually economical work also worthy of consideration.

taken as derogating the over-all usefulness of the treatise. The intent is to caution against too much reliance on any available analysis of the U.C.C.

Dean Hawkland states correctly that the Code provides "that a payee may be a holder in due course to the same extent and under the same circumstances as any other holder."⁶ He goes on, however, to obscure the scheme of Article 3 on this point by stating that usually "the payee will not be a holder in due course, because being an immediate party in most situations, he usually will take the instrument with an awareness of the defenses."⁷ This statement is technically correct, except that it is doubtful that the payee knows of the defense in the typical case. The more important and more general rule is that under § 3-305(2) no defenses are cut off between parties who have dealt with each other, even though one of them may be a holder in due course. Thus the payee seller who has unknowingly breached a warranty will be subject to that defense, but he will not thereby lose his status as a holder in due course. Being a holder in due course although subject to the defenses of the maker is important, for example, under § 3-418, which makes certification of a check final in favor of a holder in due course.

Dean Hawkland's discussion of taking an instrument in good faith and without notice could also be misleading. His inclusion of the requirement of taking without notice under the rubric of good faith may be permissible rhetoric, but it becomes dangerous when it is said that the Code "generally adopts the 'white heart' test of good faith."⁸ The treatise points only to certain suspicious circumstances listed in § 3-302(3), such as purchasing at a judicial sale, as limiting the "white heart" doctrine.⁹ This analysis fails to point out the possibilities of the requirement of taking without notice when read with § 1-201(25) which provides that: "A person has 'notice' of a fact when . . . from all the facts and circumstances known to him at the time in question he has reason to know that it exists."¹⁰

The discussion in the treatise of the right of a party to a negotiable instrument to set up the defenses of some third person is an admirable simplification of this difficult problem.¹¹ Section 3-306(d) allows the defense that payment would be inconsistent with the terms of a restrictive indorsement, or the defense of theft, and then provides: "The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party." The term "claim to the instrument" is arguably a continuation of the concept of defective title under § 55 of the NIL, which covered situations such as fraud or duress where rescission would traditionally be available. Dean Hawkland assumes that *defenses* of third parties may also be urged where the person having

6. HAWKLAND, A TRANSACTIONAL GUIDE 539 (1964).

7. *Ibid.*

8. *Id.* at 534-40.

9. *Id.* at 540.

10. Thus, New York's retention of the old NIL § 56 rule that notice will only prevent one being a holder in due course if "his action in taking the instrument amounts to bad faith" is not without substance. N.Y.U.C.C. § 3-304(7).

11. HAWKLAND, *op. cit. supra* note 6, at 546.

the defense defends the action. He may be right, but some discussion or at least warning would have been appropriate.

The brief discussion of the interrelationship of the UCC and the Bankruptcy Act is generally accurate and helpful and certainly necessary to a full understanding of Article 9. In the discussion of *Moore v. Bay*,¹² however, the treatise takes an unjustifiably definite stand on a difficult and unresolved problem. *Moore v. Bay* held that a chattel mortgage, which was voidable under state law as to unsecured creditors who became such prior to a delayed recording, was void as against the trustee in bankruptcy, and that it was *totally* void, not just void to the extent of such creditors' claims. As the treatise correctly states, Article 9 is designed to avoid most of the effect of this decision. Under the U.C.C., no simple, unsecured creditor comes ahead of a security interest.

The U.C.C. naturally continues the prior law that a security interest is subordinate to the claim of a creditor with a lien by attachment or execution, *i.e.*, a lien creditor, whose lien arose prior to the perfection of the security interest.¹³ The trustee can avoid and preserve for the benefit of the estate any judgment lien acquired within four months of bankruptcy under § 67 of the Bankruptcy Act. Dean Hawkland concludes that a judgment lien of \$500 acquired within four months of bankruptcy and attaching before perfection of a security interest of \$10,000 could be used by the trustee to totally defeat the security interest under § 70(e) of the Bankruptcy Act and the doctrine of *Moore v. Bay*. This conclusion is perhaps supported by the literal words of the statute and the case, but such an extension of the unreasonable doctrine of *Moore v. Bay* is not required.

Dean Hawkland's reasoning would apply with almost equal force to a security interest which is subordinate to a small federal tax lien, where the tax lien is not good against the trustee in bankruptcy.¹⁴ If the language in § 70(e), "voidable for any other reason by any creditor," includes being subordinate to a superior security interest, tax lien, or judgment lien, then the continuing application of *Moore v. Bay* is substantial. Professor MacLachlan would avoid this result by concluding, with some difficulty, that the term "creditor" in § 70(e) does not include a secured or lien creditor.¹⁵ A somewhat better argument is that the term "voidable" does not include being subordinate to some other lien.¹⁶ Although Professor Hawkland's position is tenable, the condensed treatise should have indicated the alternative solution protecting the secured transaction.¹⁷

12. 284 U.S. 4 (1931). See HAWKLAND, *op. cit. supra* note 6, at 695-96.

13. UNIFORM COMMERCIAL CODE § 9-301.

14. See *Phoenix Title and Trust Co. v. Stewart*, 337 F.2d 978, 985-86 (9th Cir. 1965) and *Wethered v. Alban Tractor Co.*, 224 Md. 408, 415-16, 168 A.2d 358, 361-63, *cert. denied*, 368 U.S. 830 (1961). The bootstrap syllogism seems to be essentially this: the security interest is subordinate to some lien; the lien is voidable by the trustee, and he claims its benefit; the trustee merely represents the unsecured creditors; therefore, the security interest is voidable by the unsecured creditors within the meaning of § 70(e) of the Bankruptcy Act.

15. MACLACHLAN, *BANKRUPTCY* § 286, at 335 (1956).

16. I COOGAN, *HOGAN AND VAGTS, op. cit. supra* note 4, § 9.03(3) (iv).

17. Dean Hawkland, with good reason, does not discuss the even more involved danger to security interests presented by the virtually unfollowed solution to the problem of circuity of claims in *In Re Quaker City Uniform Co.*, 238 F.2d 155 (3d Cir.), *cert. denied*, 352 U.S. 1030 (1956).

A Transactional Guide is more thorough than the ALI-ABA Handbooks, which have been very helpful. The *Guide* has the additional advantages of coverage of Article 8 on Investment Securities, sample forms, and an index. Although there have been some departures by individual states from the official text of the U.C.C., these have been relatively minor, and the exclusion of such variations from a basic work such as the *Guide* seems preferable. As the cases interpreting the statute accumulate, supplements to this treatise, along with such efforts as the annotations being published by the Boston College Industrial and Commercial Law Review, should provide a view of the U.C.C. sufficiently national to minimize parochial interpretations of the statute.

*Hal M. Smith**

* Professor, University of Maryland Law School.