

Uniform Commercial Code Article 1 Drafting Committee

Meeting of October 29-31, 1999

AGENDA

I. Call to Order (10:00 a.m., Friday, October 29, 1999)

II. Introduction and Organizational Matters

III. Consideration of September 1999 Draft of Revised UCC Article 1:

A. Section 1-102. This section addresses both the purposes and policies of the UCC and its preemptive nature. At the October 1997 meeting of the Drafting Committee, a tentative decision was made to separate those two points and move the preemptive nature to its own section (as it appears in current Article 1). At the April-May 1999 meeting, however, the Drafting Committee reversed that decision and decided to address both points in the same section. In addition, each meeting of the Drafting Committee has resulted in a slightly different articulation of the extent to which the UCC preempts application of other law. A decision is needed as to whether this draft, which reflects the general agreement of the Drafting Committee that the preemptive nature of the Code should be stated somewhat more strongly than in current UCC Section 1-103, articulates the principle appropriately.

Materials: September 1999 Draft

B. Section 1-302. This section addresses choice of law issues, providing rules for cases in which the parties have agreed as to the applicable law and cases in which they have not. Two specific substantive provisions require Drafting Committee attention. First, the “rule of validation” in subsection (f) has been in brackets for the last several drafts, and a decision is required as to whether to include this rule in Article 1. Second, the Drafting Committee has considered several articulations of the rule in subsection (a) that determines what sort of a relationship to the Uniform Commercial Code is necessary for a transaction to be governed by section 1-302. Drafting Committee decisions are needed for both of these provisions. More generally, the Drafting Committee should consider section 1-302 as a whole.

Materials: September 1999 Draft

C. Section 1-301. At the October 1997 meeting, the Drafting Committee decided to bracket this provision and reconsider it after the Committee decided on the appropriate scope for the application of section 1-302. The Committee should decide whether it

wants to retain this provision, and, if so, whether the provision is satisfactory in its current form.

Materials: September 1999 Draft

D. Section 1-306. This section, which appears in brackets, would apply the unconscionability principle currently codified in UCC sections 2-302 and 2A-108 to the remaining Articles of the Uniform Commercial Code (with the exception of Article 5). The Drafting Committee needs to decide (1) whether to include this section in Article 1, and (2) if the section is to be included, what should be the substantive scope of the provision.

Materials: September 1999 Draft

E. Definition of “consumer.” Article 1 defines “consumer” only as used in section 1-302. Yet, drafts of revised Articles 2 and 2A also use the term and contain definitions that (but for reflecting the differing context of sales and leases) are quite similar to each other; revised Article 9 uses and defines several consumer-related terms, but also (in revised Section 9-201) uses the term “consumer” without a definition. The Drafting Committee should decide whether the term (or at least its essential core) should be defined in Article 1 consistently for all Articles.

Materials: September 1999 Draft

F. Definitions relating to electronic commerce and communication. This draft replaces the definitions appearing in the September 1997 Draft with those that appeared in the 1999 Annual Meeting Draft of Article 2. As Article 2 evolves on these points, Article 1 will stay current with it. Independent of Article 2, however, several electronic commerce terms are used in other Articles, with definitions that occasionally differ in non-substantive ways. The Drafting Committee should determine whether such definitions should be harmonized and appear in Article 1.

Materials: September 1999 Draft; Memorandum Concerning Electronic Commerce Issues

G. UETA Issues. The Drafting Committee should consider whether any references in the Uniform Commercial Code to “writing” or “signed,” which would be subject to UETA but for the exclusion from UETA’s scope in Section 3(b)(2) of that Act, ought to be reconsidered in light of UETA. A compendium of these references in Articles 3, 4, and 4A, which was prepared for The Permanent Editorial Board for the Uniform Commercial Code, is included as Appendix C to the Memorandum Concerning Electronic Commerce

Issues. A compendium of references to these concepts in Articles 6 and 7 is included as Appendix D to the Memorandum Concerning Electronic Commerce Issues.

Materials: Memorandum Concerning Electronic Commerce Issues and Appendices A-D.

H. Definition of “conspicuous.” The definition of this term has been discussed extensively in the Article 2 and Article 2A Drafting Committees. Yet, the term is also used in Articles 3, 7, and 8, as well as in the conforming amendments to Article 2A that accompanied revised Article 9. The definition of “conspicuous” that appears in current 1-201(10) now appears anachronistic. The September 1999 Draft reflects the work of the Article 2 and Article 2A Drafting Committees to date. The Drafting Committee should decide whether this definition (as further refined, perhaps, by the Article 2 and Article 2A Drafting Committees) is appropriate for use in Articles 3, 7, and 8.

Materials: September 1999 Draft

I. Other Matters Raised by the Draft. Because recent drafting committee meetings have been dominated by harmonization issues, the Drafting Committee will be reviewing for the first time the effectuation of a number of Drafting Committee decisions made at the October 1997 Drafting Committee meeting. In addition to the sections specifically mentioned already in this Agenda, sections in which such changes have been made include sections 1-104, 1-201(25), 1-201(35), 1-201(40) 1-303, 1-304, 1-305, 1-307, and 1-309. In addition, the Committee should raise any additional points regarding sections of the Draft. The Article 1 Draft will be submitted to the American Law Institute Council for its consideration on December 10, 1999. The Committee should be satisfied that the Draft is ready to be presented to the Council.

Materials: September 1999 Draft

J. Article 3 “Payment Rule.” At the April-May 1999 meeting, the Drafting Committee considered a proposal to amend UCC Article 3 to change the rule in Section 3-602 that discharges an obligor only if the obligor pays a person entitled to enforce the note, and tentatively agreed to include a bracketed provision for further consideration. In light of the possible authorization of a drafting committee to further revise Articles 3 and 4, the Drafting Committee should consider what action, if any, it wants to take with respect to this proposal. Should we move forward with the bracketed provision, or await the PEB’s determination as to whether a drafting committee for Articles 3 and 4 should be appointed, which then would be the appropriate group to address this issue?

Materials: Cohen Memoranda of February 27, 1998, and April 13, 1999