

**UNIFORM COMMERCIAL CODE**  
**REVISED ARTICLE 1 — GENERAL PROVISIONS**

**REPORTER’S PREFATORY COMMENTS**

**I. Introduction**

This document is the first complete draft of Phase One of the tasks before this Drafting Committee — preparation of Revised Article 1 of the Uniform Commercial Code. Phase Two of our work will consist of reexamination of the other substantive Articles of the Uniform Commercial Code from a perspective of internal harmonization.

**II. Issues Raised by this Draft**

**A. Organization**

Current Article 1 is divided into two parts. Part 1 is entitled “Short Title, Construction, Application and Subject Matter of the Act.” Part 2 is entitled “General Definitions and Principles of Interpretation.” The rationale for placement of particular sections in one part or the other is occasionally obscure.

In light of the reorganization of Articles 2, 2A, and 9, and the organization of draft Article 2B, this draft reorganizes Article 1 into three parts. Part 1 — “Construction, Application and Subject Matter of the Act” — contains general rules about the UCC as a whole. Part 2 — “General Definitions and Rules of Interpretation” — contains the Code’s major definitional section as well as a section containing some additional rules of interpretation. Part 3 — “Scope, Territorial Application, and Rules of General Applicability” — contains substantive rules that apply to transactions governed by any of the Code’s other Articles.

The Drafting Committee should consider whether this reorganization is helpful and appropriate.

**B. “Opting In”**

Revised section 1-104 articulates a proposal before us that would allow parties to a transaction not governed by the UCC (or governed by it only in part) to agree that the UCC will supply the rules governing their relationship. The Drafting Committee should consider whether this section is necessary or appropriate. (It should be noted that there is no explicit articulation of a right to “opt out” of the Code’s rules because such an agreement would be governed by revised section 1-303, which is a restatement of current section 1-102(3).)

**C. Electronic Writings and Notices**

The definitions contained in section 1-201 reflect the work of the Drafting Committees revising Articles 2 and 2A and preparing Article 2B, and of the Working Group on Electronic Writings and Notices of the Committee on the Law of Commerce in Cyberspace and the Uniform Commercial Code Committee of the Section on Business Law of the American Bar Association, in attempting to make the various terms defined in that section reflect modern concepts of “writings” and “notices.” Among other changes, the term

“record supplants “writing, and the term “authenticate replaces “sign. Drafting Committee members should review these and other changes carefully.

#### **D. Good Faith**

Section 1-201(23) replaces the current definition of “good faith ( “honesty in fact in the conduct or transaction concerned ) with the definition adopted by most of the recently revised Articles and Articles in the process of drafting or revision — “honesty in fact *and the observance of reasonable commercial standards of fair dealing.*” (The definition explicitly provides, however, that Article 5 is governed by the definition in UCC section 5-102(a)(7).) In addition to centralizing the developments already taking place in the other Articles, the new definition resolves any ambiguity as to the proper definition to apply to the general duty of good faith imposed by Article 1.

#### **E. Scope of Applicability of Substantive Rules in Article 1**

Current Article 1 contains several substantive rules. These rules are contained in Part 3 of the revised Article. Occasionally courts and parties have expressed uncertainty as to which transactions are governed by those substantive rules. Revised section 1-301 expresses a point which was implicit in the current Article — namely, that the substantive rules in Article 1 apply to transactions within the scope of the other Articles.

#### **F. Conflict of Laws and Choice of Forum**

Revised section 1-302 represents a significant rethinking of current section 1-105. The new section reexamines both the power of the parties to select the jurisdiction whose law will govern their transaction and choice of law in the absence of such agreement. In addition, the section addresses the effectiveness of contractual provisions that select an exclusive or non-exclusive forum for the resolution of disputes.

#### **G. Course of Performance**

Revised section 1-304 incorporates the concept of “course of performance” from Articles 2, 2A, and draft Article 2B into the Article 1 treatment of course of dealing and usage of trade.

#### **H. Unconscionability**

Revised section 1-306 incorporates the concept of unconscionability from Articles 2, 2A and 2B. In this regard, it should be noted that a doctrine of unconscionability has long been recognized outside the sales/lease context by, e.g., Restatement, Second, Contracts §208 and California Civil Code § 1670.5.

#### **I. Statute of Frauds**

Revised section 1-307 provides two alternatives. Alternative A would retain a statute of frauds for sales of personal property in excess of a threshold amount. Alternative B would abolish the current writing requirement and indicate that no such requirement is imposed by non-Code law.