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THE ARTICLE 1 REVISION PROCESS

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I. INTRODUCTION

THE Article 1 revision process began with a report from an American Bar Association Task Force to the Permanent Editorial Board of the U.C.C. recommending certain substantive revisions to Article 1. The Article 1 Committee was appointed in 1996.¹ In addition to considering substantive revisions to Article 1, the Committee also was given the task of coordinating the revisions to other articles in order to eliminate unintended differences in provisions and policies, a process that came to be known as “harmonization.” This Article briefly discusses the Committee’s work with regard to each of its roles. Part II describes the revisions that have been made to Article 1. Part III discusses the Committee’s harmonization efforts.

II. SUBSTANTIVE REVISIONS

Article 1, General Provisions, is different in kind from the other substantive articles of the Uniform Commercial Code (“UCC”). While the other substantive articles provide rules to govern particular types of commercial transactions, Article 1 provides rules that govern all transactions covered by the UCC without regard to their nature. It contains general rules of construction for interpreting the provisions of the entire Code,² definitions applicable throughout the Code,³ a choice of law rule that applies to the other articles to the extent they do not contain their own

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1. The original members of the Article 1 Committee were Boris Auerbach, Chair; Marian Benfield, Amelia H. Boss, Curtis Reitz, and Connie Ring. Neil Cohen was the Reporter. Kathleen Patchel subsequently became a member of the Committee and was added as National Conference Associate Reporter in connection with the Committee’s harmonization efforts. James J. White also subsequently became a member of the Committee.

2. See, e.g., U.C.C. § 1-102 (1995) (mandating liberal construction of the Code to further its purposes and providing for variation by agreement); *id.* § 1-103 (supplementation of the Code by other law); *id.* § 1-104 (construction against implicit repeal).

3. See U.C.C. § 1-201 (1995) (general definitions).

provisions on choice of law,⁴ and a few substantive provisions applicable throughout the entire Code.⁵ Its provisions are the coordinating mechanism that holds the Code together, providing a level of commonality across the various substantive Articles of the Code.

Because the provisions of Article 1 apply to the entire Code, the impact of decisions regarding what provisions it includes is greater than that for decisions regarding provisions in individual articles. Thus, the Article 1 Drafting Committee was confronted with a slightly different task from other UCC drafting committees in deciding what revisions to Article 1 were appropriate. In addition to deciding whether proposed revisions were appropriate rules as a matter of policy, the Article 1 Committee also had to consider whether a proposed rule, however meritorious in its own right, was one that could be applied in the same form across a number of different categories of commercial transactions with consistently predictable results.

Further, as with other drafting committees dealing with revision of existing Code articles, the Article 1 Committee was sensitive to the need to avoid changes to the language of Article 1 based on purely stylistic reasons. Although existing Article 1 language may not always be elegant or concise, it is familiar to both lawyers and judges and has acquired a certain patina through years of interpretation by the courts.

The need to include only provisions that the Committee was confident could be applied consistently and without unforeseen mischief across multiple articles, and the need to avoid unnecessary changes to the language of current Article 1, meant that the Article 1 Drafting Committee necessarily was conservative in its approach to revision. Although the Committee considered a number of proposals for change, they ultimately made very few substantive revisions. Proposed revisions that may have been meritorious as a matter of policy sometimes were rejected because the Committee did not feel they overcame the additional hurdle of being appropriate for inclusion in the General Provisions Article of the Code, either because the way in which they would apply to different types of transactions under the Code was unclear or because no single uniform version of the rule was appropriate, as the substance of the rule would need to vary from Article to Article. Thus, for example, although the Committee had no doubt about the intrinsic merits of the unconscionability doctrine, the Committee decided not to include an unconscionability provision in revised Article 1 because the Committee felt they could not predict with a reasonable degree of certainty how that doctrine would operate in the context of a number of the substantive articles of the UCC.

Similarly, the Committee's general reluctance to change existing Article 1 language for purely stylistic reasons resulted in relatively few stylistic changes. In general, language was rewritten only where current

4. U.C.C. § 1-105 (1995) (choice of law).

5. See, e.g., U.C.C. § 1-203 (1995) (duty of good faith); *id.* § 1-201(37) (rules as to whether a transaction creates a lease or a security interest).

wording had proven confusing, or where rephrasing was necessary to make the language gender-neutral. The language of a number of sections remains completely unchanged. The Committee did decide, however, to make structural changes to Article 1 to conform its structure to that of recently revised Articles and to make the Article in general more user-friendly. The Article was reorganized into three parts. Part 1 contains rules of interpretation applicable throughout the UCC. Part 2 contains definitions and related provisions. Part 3 contains the choice-of-law rule and substantive rules applicable throughout the Code. The most significant substantive changes are discussed below.

A. REVISED SECTION 1-102—SCOPE OF THE ARTICLE

The Revision adds an express scope provision to Article 1 to indicate which transactions are governed by its rules. Current Article 1 does not state the scope of its applicability, although implicitly its scope has always been that it only governs transactions within the scope of other articles of the UCC. Because the lack of an express scope provision occasionally caused courts and commentators to express uncertainty about which transactions are governed by its substantive rules, the Committee decided to state affirmatively the scope of Article 1. Section 1-102 provides that Article 1 “applies to a transaction to the extent that is governed by any other article of the [Uniform Commercial Code].”⁶

B. REVISED SECTION 1-103—SUPPLEMENTAL PRINCIPLES OF LAW

A second change in the Revision relates to Sections 1-102(1) and (2) and 1-103 of current Article 1. Current Section 1-102 (1) and (2) contains a rule of construction stating that the Code should be liberally construed to promote its underlying purposes and policies and lists those fundamental underlying purposes and policies. Comment 1 to current Section 1-102 elaborates on this rule of construction, explaining that the UCC should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.⁷

Thus, when read in light of this comment, Section 1-102 states that the meaning of UCC provisions is to be determined not only in light of the purposes and policies underlying the entire UCC but also in light of the purposes and policies of particular Code provisions.

Current Section 1-103 states the relationship of the Code to other law. It provides that “[u]nless displaced by the particular provisions of this Act, principles of law and equity . . . shall supplement its provisions.”⁸ It

6. U.C.C. § 1-102 (Tentative Draft Dec. 2000).

7. U.C.C. § 1-102 cmt. 1 (1995).

8. *Id.* § 1-103.

thus states both a principle of supplementation by other law and preemption of other law: principles of law and equity continue to apply to transactions governed by the UCC, but only to the extent that the provisions of the UCC do not “displace” them.

The Revision combines the purposes and policies provisions of Section 1-102 and the supplemental principles of law provision of Section 1-103 in Revised section 1-103 to reflect the interrelationship between these principles of construction. Because the fundamental rule of Code interpretation stated in Section 1-102 is to read Code text in light of the underlying purposes and policies of the Code and of the particular provisions under consideration, it logically follows that the appropriate scope of supplementation must be tied to those purposes and policies as well. In order to determine whether a principle of law or equity has been “displaced” by a particular provision of the Code, one must first determine the scope of the Code provision. Comment 1 to Section 1-102 says that, in order to determine a provision’s scope, “the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.”⁹

Neither the pre-revision sections nor their comments, however, explicitly make this connection. Instead, the little guidance given by the comments as to what is meant by other law being “displaced” by the Code seems to create an inconsistency between the two sections. While Comment 1 to current Section 1-102 states that Code provisions must be applied in light of their underlying purposes and policies, Comment 1 to current Section 1-103 states that supplemental bodies of law continue to apply “except insofar as they are *explicitly displaced* by this Act.”¹⁰ The addition of the qualifier “explicitly” in the comment could be read to suggest that other law is not displaced unless the text of the Code expressly says so. That reading, however, would create a rigid rule at odds with Section 1-102’s admonition that the Code should be interpreted in light of its underlying purposes and policies, as well as with the principle (also found in Comment 1 to Section 1-102) that the Code may be applied by analogy.¹¹ In order to effectuate the underlying purposes and policies of the Code, the scope of displacement must extend to displacement by the purposes and policies of Code provisions as well as by express displacement in the text. Otherwise, other law could be applied to supplant the Code’s provisions rather than to supplement them by thwarting the

9. U.C.C. § 1-102 cmt. 1 (1995).

10. U.C.C. § 1-103 cmt. 1 (1995).

11. ROBERT A. HILLMAN ET AL., COMMON LAW AND EQUITY UNDER THE UNIFORM COMMERCIAL CODE ¶ 1.04[2], at 1-7 (1985) (“Demanding an explicit displacement of non-Code principles is not consistent with construing the Code to effectuate its underlying policies or extending the Code through analogical development. . . . “[T]he use of the word ‘explicitly’ in Comment 1 to Section 1-103 was employed ill-advisedly. The use of this term is not supported by the text of Section 1-103, and is inconsistent with the text of Section 1-102(1). The courts should thus disregard this part of the Comment as inconsistent with the text of the statute.”).

purposes and policies those provisions reflect.¹²

The Drafting Committee considered several reformulations of the text of current Section 1-103 designed to better articulate the relationship between the purposive construction of the Code and the extent of permissible supplementation by other law. Ultimately, however, the Committee decided that the problem could best be resolved, not by changing the text, but by combining the relevant parts of the two sections and providing a new comment to give better guidance as to circumstances under which other law is displaced. Comment 2 to revised Section 1-103 sets out the basic principle that other law is displaced if that other law is inconsistent with either the text or the underlying purposes and policies of the relevant Code provisions.

Revised Comment 2 also discusses the separate issue of the relationship of the Code to other statutes. It notes that when the “other law” involved is not a principle of common law or equity, but another statute, Section 1-103 may still be relevant, but other rules of statutory construction dealing specifically with the interrelationship between statutes come into play as well, and may very well be controlling.

C. REVISED SECTION 1-201—DEFINITIONS

Revised Article 1 makes several changes to existing definitions, while also adding several new definitions. In addition, two of the existing Article 1 definitions have been deleted, as no longer necessary, and several have been relocated and rewritten as substantive rules. These changes are discussed in more detail below.

1. Changes to Existing Definitions

a. Section 1-201(22)—“Good Faith”

The most significant change in the definitional section is the addition of an objective component to the definition of “good faith.” Current Section 1-201(19) defines “good faith” as “honesty in fact in the conduct or transaction concerned.”¹³ Revised Section 1-201(22) adds an objective element to the definition of “good faith,” defining “good faith” as not only honesty in fact, but also “the observance of reasonable commercial standards of fair dealing.”¹⁴ This change makes the Article 1 definition consistent with the updated definitions of “good faith” that have been

12. *See id.* at 1-7:

It is particularly important that the courts refrain from turning to pre-Code law reflexively, merely because they encounter initial linguistic difficulty in applying the code text to the problem before them. The issue should initially be stated in terms of whether the pre-Code doctrine has been expressly *or impliedly* overturned by the Code, bearing in mind the purposive reading of the Code invited by Section 1-102. If the pre-Code rule is inconsistent with the policies that the drafters sought to effectuate, then it has been impliedly displaced.

13. U.C.C. § 1-201(19) (1995).

14. U.C.C. § 1-201(22) (Tentative Draft Dec. 2000).

added in recent revisions to individual Code articles. With the exception of Article 5,¹⁵ all of the recent revisions to the UCC have added an objective element to the definition of good faith.¹⁶ Article 5 is expressly excluded from the Revised Article 1 definition.¹⁷

b. Other Changes

Minor revisions were made to a number of definitions. The definition of "bank" was revised to conform to the Article 4A definition of that term by expressly including "a savings bank, savings and loan association, credit union, and trust company."¹⁸ The reference to and definition of "airbill" were deleted from the definition of "bill of lading" as no longer necessary.¹⁹ "Default" was added to the list of items that can constitute "fault."²⁰ The reference to securities was deleted from the definition of "fungible," as Article 8 no longer uses "fungible" to describe securities, and the definition was rewritten for clarity.²¹ The definition of "holder" also was rewritten for clarity.²² A reference to bona fide disputes was added to the definition of "insolvent," and the definition was rewritten for clarity.²³ The definition of "money" was revised to make it clear that only a "currently authorized" medium of exchange is included.²⁴ The definitions of "organization" and "person" were rewritten to conform to the standard NCCUSL definitions of these concepts.²⁵ The definition of "security interest" was rewritten to conform to the revisions made to that definition in Revised Article 9, and, as discussed below, the portion of the

15. See U.C.C. § 5-102(7) (1995) (defining "good faith" as "honesty in fact in the conduct or transaction concerned").

16. See, e.g., *id.* §§ 3-103(a)(4), 4A-105(a)(6), 8-102(a)(10), 9-102(a)(43). Article 2 always has applied an objective standard of good faith with regard to merchants. *Id.* § 2-103(1)(b) ("'Good faith' in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade."). The Article 2 definition has been incorporated into Article 2A by reference. *Id.* § 2A-103(3). Articles 6 and 7 are the only articles that do not currently have their own definition of "good faith."

17. The subjective definition of "good faith" contained in Article 5 would apply to Article 5 transactions even in the absence of the express exclusion in Revised Section 1-102(22), of course, as Article 1 definitions are subject to definitions in other articles. U.C.C. § 1-201(b) (Tentative Draft Dec. 2000). The rationale for retaining a subjective definition of "good faith" in Article 5 is explained in the comments to section 5-102. See U.C.C. § 5-102 cmt. 3 (1995).

18. Compare U.C.C. § 1-201(4) (1995) with U.C.C. § 1-201(b)(5) (Tentative Draft Dec. 2000). See U.C.C. § 4A-105(a)(2) (1989).

19. Compare U.C.C. § 1-201(6) (1995) with U.C.C. § 1-201(b)(7) (Tentative Draft Dec. 2000).

20. Compare U.C.C. § 1-201(16) (1995) with U.C.C. § 1-201(b)(19) (Tentative Draft Dec. 2000).

21. Compare U.C.C. § 1-201(17) (1995) with U.C.C. § 1-201(b)(20) (Tentative Draft Dec. 2000).

22. Compare U.C.C. § 1-201(20) (1995) with U.C.C. § 1-201(b)(23) (Tentative Draft Dec. 2000).

23. Compare U.C.C. § 1-201(23) (1995) with U.C.C. § 1-201(b)(25) (Tentative Draft Dec. 2000).

24. Compare U.C.C. § 1-201(24) (1995) with U.C.C. § 1-201(b)(26) (Tentative Draft Dec. 2000).

25. Compare U.C.C. § 1-201(28), (30) (1995) with U.C.C. § 1-201(b)(17), (29) (Tentative Draft 2000).

definition dealing with whether a transaction creates a lease or a security interest was moved to a separate substantive provision.²⁶ The definition of “send” was updated to include electronic transactions by adding the “record” concept and was rewritten for clarity.²⁷ In addition, the current revision draft contains a placeholder for the definition of “conspicuous,” pending revision of that definition in connection with the revision of Article 2. Once the content of the Article 2 definition is determined, the Article 1 Committee will assess whether the Article 2 definition is appropriate for general use throughout the UCC.

2. Deleted Definitions

The definitions of “honor”²⁸ and “telegram”²⁹ have been deleted in Revised Article 1. The definition of “honor” was deleted because a general definition of the term is not needed. “Honor” is used only twice outside of Article 5³⁰ and is defined in Article 5.³¹ Finally, the definition of “telegram” was deleted as outmoded.

3. Definitions Moved to Substantive Provisions

Three provisions from the definitional section were moved to their own sections to reflect their largely substantive content. The rules for distinguishing a true lease from a security interest were moved from the definition of “security interest” to new Section 1-203.³² The definitions of “notice” and “knowledge,” and the cluster of related definitions and rules found in pre-revision Sections 1-201(25)-(27), were moved to revised Section 1-202.³³ The definition of “value” was moved to revised Section 1-204.³⁴ Although the rules contained in these three former definitional sections were rewritten for clarity, no substantive changes were made.

4. New Definitions

Four new definitions have been added: “authenticate,” “consumer,” “record,” and “state.” Definitions of “authenticate”³⁵ and “record”³⁶ were added to reflect the adoption of those terms in recent UCC revisions as a means of providing medium neutrality. The precise wording of

26. Compare U.C.C. § 1-201(37) (1995) with U.C.C. §§ 1-201(b)(38), 1-203 (Tentative Draft Dec. 2000).

27. Compare U.C.C. § 1-201(38) (1995) with U.C.C. § 1-201(b)(39) (Tentative Draft Dec. 2000).

28. U.C.C. § 1-201(21) (1995).

29. *Id.* § 1-201(41).

30. See U.C.C. §§ 2-503(4)(b), 2-512 (1995).

31. See U.C.C. § 5-102(8) (1995).

32. Compare U.C.C. § 1-201(37) (1995) with U.C.C. § 1-203 (Tentative Draft Dec. 2000).

33. Compare U.C.C. § 1-201(25)-(27) (1995) with U.C.C. § 1-202 (Tentative Draft Dec. 2000).

34. Compare U.C.C. § 1-201(44) (1995) with U.C.C. § 1-204 (Tentative Draft Dec. 2000).

35. U.C.C. § 1-201(4) (Tentative Draft Dec. 2000).

36. U.C.C. § 1-201(34) (Tentative Draft Dec. 2000).

the definition of "authenticate," however, has been deferred until completion of the Article 2 revision. The definition of "consumer" was added in light of that concept's growing importance in the Code. At the time the UCC was originally drafted there were very few distinctions in the Code's rules based on consumer status. The Committee determined that recent revisions, including the Article 1 revision of its choice-of-law rules, have made the "consumer" distinction a sufficiently important concept in the Code to warrant a definition. The Committee adopted the traditional definition of "consumer" used by the courts and in other statutes:³⁷ "an individual who enters into a transaction primarily for personal, family or household purposes."³⁸ Finally, the standard NCCUSL definition of "state" was added.³⁹

In addition to these four entirely new definitions, a definition of "present value," based on the definition of that term in the current definition of "security interest," was added.⁴⁰ Placeholders also remain in the current draft's definitional section for new definitions of "electronic agent" and "electronic message" pending the decision as to whether these terms will be used in Articles 2 and 2A.

D. REVISED SECTION 1-303—COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE

Although the comments to pre-revision Section 1-205 refer to course of performance,⁴¹ the section itself deals with only course of dealing and usage of trade. The Revision remedies this omission by adding course of performance to course of dealing and usage of trade as relevant in ascertaining the meaning of the parties' agreement and supplementing its express terms.⁴² This change was among those recommended by the ABA Article One Task Force in its Study Report. The Article 1 course-of-performance rules are based on those currently found in Articles 2 and 2A.⁴³

E. STATUTE OF FRAUDS

The statute of frauds found in pre-revision Section 1-206 was deleted in the Revision. The Committee determined that this provision was unnecessary for transactions within the UCC and inappropriate for transactions outside the UCC. An Article 1 statute of frauds is unnecessary for transactions within the UCC because other articles of the Code make their own individual determinations as to the extent to which writings will be

37. *Cf., e.g.*, U.C.C. § 9-109 (1995); U.C.C. § 9-102(a)(23) (1999) (definition of "consumer goods").

38. U.C.C. § 1-201(11)(a) (Tentative Draft Dec. 2000).

39. U.C.C. § 1-201(41) (Tentative Draft Dec. 2000).

40. *Compare* U.C.C. § 1-201(37)(z) (1995) *with* U.C.C. § 1-201(30) (Tentative Draft Dec. 2000).

41. *See* U.C.C. § 1-205 cmt. 2 (1995).

42. *Compare* U.C.C. § 1-205 (1995) *with* U.C.C. § 1-303 (Tentative Draft Dec. 2000).

43. *See* U.C.C. § 2-208 (1995); *id.* § 2A-207 (1987).

required in transactions within their scope.⁴⁴ This means that the Section 1-206 statute of frauds can only apply to transactions outside of the UCC. That application is inconsistent with the scope of Article 1, now expressly stated as limited to transactions within other articles of the Code.⁴⁵

F. REVISED SECTION 1-301—CHOICE OF LAW

The most significant change to Article 1 made by the Revision was the complete rewrite of the Article 1 choice-of-law rules. The Committee's work on Section 1-301 occupied more of its time than any other of the revisions and attracted by far the most attention and comment. Section 1-301 is a significant rethinking of the choice-of-law issues addressed in pre-revision Section 1-105, both with regard to the power of the parties to select the applicable law by contract and with regard to the law applicable in the absence of contract. A brief summary of the changes made by Section 1-301 follows.

1. Choice of Law by Contract

Current Section 1-105 authorizes parties to choose the law that will apply by contract but limits their ability to choose in two ways. First, the parties may make a contractual choice of law only "when a transaction bears a reasonable relation to this state and also to another state or nation."⁴⁶ Thus, the right of the parties to choose the governing law is limited to multi-state and international transactions.⁴⁷ Second, the parties are limited in their choices to the law of one of the jurisdictions that bears a reasonable relation to the transaction.⁴⁸ These same rules apply to both commercial and consumer transactions.

Section 1-301 distinguishes between commercial and consumer transactions, retaining the reasonable-relationship limits only for consumer transactions.⁴⁹ Section 1-301 further provides that, in consumer transactions, the law otherwise chosen, whether by the parties or by the court in

44. See, e.g., U.C.C. § 2-201 (1995) (Article 2 statute of frauds); *id.* § 2A-201 (1987) (Article 2A statute of frauds); *id.* § 3-103(6), (9) (defining orders and promises as "written" instruments).

45. U.C.C. § 1-102 (Tentative Draft Dec. 2000). Section 1-206 also has the distinction of being one of the two provisions in current Article 1 not exempt from the federal Electronic Signatures in Global and National Commerce Act ("E-SIGN"), enacted on June 30, 2000, which provides that "a signature, contract or other record relating to [a transaction in or affecting interstate or foreign commerce] may not be denied legal effect, validity, or enforceability solely because it is in electronic form." 15 U.S.C. § 7001(a)(1) (2000). The other Article 1 Section subject to E-SIGN is Section 1-107 (requiring a written waiver or renunciation signed by the aggrieved party to discharge a claim or right arising out of an alleged breach). 15 U.S.C. § 7003(a)(3) (2000). Revised Section 1-306, which replaces Section 1-107, conforms that section to E-SIGN by allowing discharge of a claim or right "by agreement of the aggrieved party in an authenticated record." U.C.C. § 1-306 (Tentative Draft Dec. 2000).

46. U.C.C. § 1-105(1) (1995).

47. *Id.* cmt. 1.

48. *Id.* §§ 1-105(1), 1-105 cmt. 1

49. U.C.C. § 1-301(d)(1) (Tentative Draft Dec. 2000). A consumer transaction is one in which one of the parties to the transaction is a consumer. *Id.* § 1-301(d). A "consumer"

the absence of effective choice, may not deprive the consumer of protective rules of law of the consumer's habitual residence that may not be varied by agreement.⁵⁰ The one exception to this rule is that, in the case of a sale of goods, when all of the relevant events—all the significant steps in making the contract and the delivery of the goods—take place in a jurisdiction other than that of the consumer's habitual residence, then the non-variable protective rules of that jurisdiction apply instead of those of the consumer's habitual residence.⁵¹

In nonconsumer transactions, Section 1-301 broadens the ability of the parties to choose law by agreement. In domestic transactions, both of the limits of pre-revision Section 1-105 were eliminated: the parties can choose applicable law by contract although their transaction has a relationship to only one state, and the law chosen does not have to be of a state that bears any relation to the transaction.⁵² Before the parties can choose the law of a foreign country by contract, however, their transaction must bear a reasonable relation to a country other than the United States.⁵³ As long as this requirement is met, the law chosen by the parties in an international transaction need not be of a state or country that has any relation to the transaction.⁵⁴

2. *Applicable Law in the Absence of Effective Contractual Choice*

Pre-revision Section 1-105 provides that if the parties do not choose the applicable law by agreement, then the UCC of the forum state applies to transactions that bear "an appropriate relation" to the forum.⁵⁵ This rule is in essence a forum-favoring provision, designed to insure maximum application of the UCC at a time when it was unclear how widespread its enactment might be.

Revised Section 1-301 abandons this special "appropriate relation" test in favor of application of the forum state's general choice of law rules. Section 1-301(c) provides that, in the absence of an effective agreement of the parties, "the rights and obligations of the parties are determined . . . by the law that would be selected by application of this State's conflict of laws principles."⁵⁶ Review of UCC choice-of-law cases revealed that in practice a significant number of courts were ignoring the "appropriate relation" test in favor of application of their general choice of law rules anyway. The Committee's adoption of the Revision rule thus is in part based on a recognition of this reality. The revised rule also reflects the

is "an individual who enters into a transaction primarily for personal, family, or household purposes." *Id.* § 1-201(b)(11)(a).

50. *Id.* § 1-301(d)(2)(A).

51. *Id.* § 1-301(d)(2)(B).

52. *Id.* § 1-301(b)(1).

53. *Id.* § 1-301(a)(2).

54. U.C.C. § 1-301(b)(2) (Tentative Draft Dec. 2000).

55. U.C.C. § 1-105(1) (1995).

56. U.C.C. § 1-301(c) (Tentative Draft Dec. 2000).

now well-established status of the UCC, which no longer requires a forum-favoring rule in order to enhance the likelihood of its application.

3. *Other Rules*

In addition to the rules discussed above, revised Section 1-301 contains several principles that have no counterpart in pre-revision Section 1-105. First, because current Article 1 does not contain an express scope provision, the scope of the choice-of-law rules in Section 1-105 is not entirely clear. As discussed above, revised Section 1-102 expressly states that Article 1 applies to a transaction to the extent it is governed by one of the substantive articles of the UCC. In the choice of law context, application of this scope provision means that the rules of Section 1-301 apply to a transaction to the extent it is governed by the UCC. Second, unlike pre-revision Section 1-105, revised Section 1-301 and its comments address the effect of fundamental policy on choice of law. Section 1-301(e) places a fundamental policy limit on the parties' contractual choice of law, providing that their choice is not effective to the extent application of the chosen law would be contrary to a fundamental policy of the jurisdiction whose law would govern in the absence of agreement. Third, the comments to revised Section 1-301 state that the traditional principle pursuant to which a forum may refuse to apply the law selected by the parties when application of that law would be contrary to a fundamental policy of the forum may cause a court to refuse to enforce a contractual choice-of-law provision, although the choice of law is not contrary to a fundamental policy of the state whose law would otherwise apply. Finally, the comments indicate that issues relating to the basic validity of a choice-of-law agreement are left to other law.

III. HARMONIZATION

Most of the UCC has undergone revision during the past decade. In addition to revising Article 1, the Article 1 Committee was given the task of monitoring the ongoing revisions of other Articles to avoid unnecessary differences in language and policies among the various Articles. The Committee was asked to identify differences in substance, organization, and language among the Articles and to facilitate the minimization of these differences through meetings with the Chairs and Reporters of the various drafting committees.

The coordination efforts of the Article 1 Committee focused primarily on the revisions to Articles 2, 2A, and the proposed new Article 2B. The subject matter of these three articles—sales, leasing, and licensing, respectively—although sufficiently distinct to require separate bodies of rules, also encompasses many common issues. Further, both Article 2A and Article 2B had used the rules of Article 2 as a base from which to develop their own rules. Thus, it was reasonable to expect that these Articles would deal with similar issues in a similar manner, except to the extent that the substantive differences were justified by differences in the

nature of the transactions covered by the three Articles, their scope, the development of the law with respect to them, or the need to reflect differing industry practices. In addition, to the extent Article 2A and proposed Article 2B had borrowed Article 2 provisions, it was considered advisable that the wording of these identical provisions be identical as well. Thus, the harmonization project had both a substantive and a nonsubstantive aspect. It was designed to coordinate both the substance of the drafts of these articles to make sure that differences in the rules were based on transactional differences and to coordinate the language of similar provisions.

The Article 1 Committee, the National Conference of Commissioners on Uniform State Laws (NCCUSL), and the American Law Institute (ALI) devoted considerable resources to the harmonization project. The Article 1 Committee as a whole spent several drafting committee meetings identifying substantive and textual differences among Articles 2, 2A, and 2B and meeting with the Chairs and Reporters of those committees to resolve the differences identified. The Article 1 Chair, Reporter, and Associate Reporter held a number of other coordination discussions and meetings with the Chairs and Reporters of the Articles. In addition, NCCUSL devoted a session at its July 1997 Annual Meeting to presentation of some of the more important substantive differences among the three articles to obtain the advice of the NCCUSL membership. After the decision to convert the proposed Article 2B from a part of the UCC into a uniform law, the Uniform Computer Information Transactions Act (UCITA), the coordination efforts continued in a more limited fashion among the policies of UCITA and Articles 2 and 2A. The final harmonization meeting also included the Uniform Electronic Transactions Act (UETA) in the coordination effort.

Throughout its harmonization efforts, the Article 1 Committee was hampered by the fact that it was dealing with not one, but three, constantly moving targets. Both the substance and the text of each of the three Articles was constantly changing, based on decisions of the individual drafting committees as each of the separate drafting efforts progressed. Further, the Committee had to deal with a certain amount of natural resistance on the part of the various Chairs and Reporters, and their committees, to alteration of language and decisions made in the individual committees in order to achieve the broader goal of consistency across the Articles. Nevertheless, while the harmonization process did not achieve complete consistency among the various revisions, there was a considerably higher degree of coordination among both policies and language after the process than had existed before it began. Perhaps of equal importance, the Article 1 Committee's harmonization efforts served to sensitize the entities involved in the uniform laws process to the importance of coordination of efforts by various drafting committees. Such coordination efforts are likely to be viewed as an important element in future revision processes.

IV. CONCLUSION

Revised Article 1 was approved by the Council of the American Law Institute in December 2000, and will be presented to the membership of the ALI for final approval at the ALI Annual Meeting in May 2001. It will then be presented for final approval by the National Conference of Commissioners on Uniform State Laws at NCCUSL's Annual Meeting in August 2001. Although in terms of sheer number of changes Revised Article 1 is not a major revision, the improvements made to Article 1 by the revision clarify and update the general provisions of the UCC in ways designed to improve significantly the UCC's continuing effectiveness as the primary statute governing commercial transactions. Further, the Article 1 Committee's harmonization efforts not only improved the coordination of language and policy among the UCC Articles and related statutes that were the subject of that process but also began a tradition of coordination among related drafting efforts that is likely to continue to the benefit of future revision projects.

