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INTRODUCTION TO THE SYMPOSIUM ON UCC REVISED ARTICLE 9

STEVEN L. HARRIS & CHARLES W. MOONEY, JR.*

Two years from now, on July 1, 2001, if all goes well, Revised Uniform Commercial Code (“UCC”) Article 9 will take effect throughout the United States. Nearly ten years in the making, Revised Article 9 will provide the legal framework for security interests in personal property and fixtures in the twenty-first century. As one might expect from any revision, Revised Article 9 improves upon its predecessor by resolving many ambiguities and providing answers to many unanswered questions. And, as one might expect from a statute written at a time of rapid technological change, Revised Article 9 is medium-neutral; it contemplates that agreements may be entered into and notices given electronically or on paper. But Revised Article 9 does much more than this. Taking account of developments in financing over the past decades, during which intangible property has become increasingly important for asset-based financing, Revised Article 9 provides a more complete treatment of complex transactions in intellectual-property rights, rights to payment of various kinds, and other intangible assets than does its predecessor. Its provisions also reflect the substantial increase in the number of cross-border secured transactions and the increasing sophistication and complexity of routine, domestic transactions.

Although Revised Article 9 preserves the basic concepts of its predecessor, it changes many of the details. Even when rules have been carried forward from Former Article 9 to the Revised Article, often they have been expressed in somewhat different language. The Revised Article reflects a substantial reorganization as well. Becoming familiar with and understanding (let alone mastering)

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As used in this article, “Revised Article 9” and “the Revised Article” refer to the 1999 official text of Article 9. References to “Revised section 9-XXX” and “R. § 9-XXX” are to sections of Revised Article 9. “Former Article 9” refers to the 1995 official text of Article 9. References to “section 9-XXX” and “U.C.C. § 9-XXX” refer to sections of the Former Article.

Revised Article 9 will take time and effort. The articles in this symposium are certain to be invaluable in this regard.

Most of the articles in the symposium were written by individuals who were directly involved in the process that led to the final product. The articles cover a wide array of topics, some that are implicated in transactions concerning more common types of collateral, such as inventory, equipment, and trade receivables, and some that concern more specialized types of collateral, such as rights under a letter of credit. Inasmuch as virtually all security interests can be perfected by filing under Part 5 of the Revised Article, the rules governing financing statements and filing offices have nearly universal application to Revised Article 9 transactions. These rules have been revised in many significant ways, and Harry Sigman, who served as the Drafting Committee's "point man" on filing, provides a helpful roadmap for them.¹ Like the filing provisions, the enforcement provisions are potentially applicable in virtually all secured transactions, although, unlike the filing provisions, the parties do enter into transactions expecting to run up against them. Nevertheless, the parties would do well to reflect upon the secured party's rights and remedies before their use is imminent. Donald Rapson, a member of the Drafting Committee who was instrumental in fashioning and refining some of the enforcement provisions, affords useful guidance on enforcement issues.²

The fact that almost half the articles in this symposium focus on the use of intangible collateral reflects the increased importance of this type of asset in secured financing. Although Former Article 9 governed the securitization of many types of rights to payment (receivables), Revised Article 9, with its expanded scope, will have an even greater role to play. Steven Schwarcz draws on his years of experience in structured finance to explain how Revised Article 9 applies to, and facilitates, these increasingly common transactions.³ A quartet of articles addresses the ways in which Revised Article 9 deals with other specific types of intangible collateral. Bruce Markell, a distinguished bankruptcy and commercial-law scholar, explains and evaluates the new and complex rules governing security interests in

1. See Harry C. Sigman, *Twenty Questions About Filing Under Revised Article 9: The Rules of the Game Under New Part 5*, 74 CHI.-KENT L. REV. 861 (1999).

2. See Donald J. Rapson, *Default and Enforcement of Security Interests Under Revised Article 9*, 74 CHI.-KENT L. REV. 893 (1999).

3. See Steven L. Schwarcz, *The Impact on Securitization of Revised UCC Article 9*, 74 CHI.-KENT L. REV. 947 (1999).

deposit accounts;⁴ John Dolan, a leading expert on letters of credit, does the same for the new and somewhat tricky rules governing security interests in letter-of-credit rights;⁵ Jane Winn, who advised the Drafting Committee on issues relating to electronic commerce, introduces readers to a new type of collateral with an oxymoron for a name, electronic chattel paper;⁶ and Steven Weise, who was the American Bar Association Advisor to the Drafting Committee and served as a link between the Drafting Committee and the intellectual-property bar, shows how the Revised Article applies to intellectual property and related rights.⁷ Kenneth Kettering, a prominent financing lawyer with an academic bent, explores repledge of securities and other investment property—a difficult topic made even more difficult when the collateral is intangible.⁸ Finally, Randal Picker, a member of the Drafting Committee and eminent scholar, uses the Revised Article’s reliance on “control” as an enhanced (and, in the case of deposit accounts as original collateral, the only) method of perfection of security interests in intangible collateral as an avenue for exploring hierarchies of perfection methods and the resulting priority rules that are not time-based.⁹

Edwin Smith and Neil Cohen, members of the Drafting Committee who serve on the U.S. State Department’s delegation to UNCITRAL’s Working Group on International Contract Practices for the Draft Convention on Assignments in Receivables, explore the international aspects of Revised Article 9.¹⁰ They caution that although the Revised Article is an improvement upon its predecessor, it does not (largely because it cannot) provide complete comfort to lenders in cross-border transactions. Marion Benfield, a member of the Drafting Committee and chair of its task force on consumer issues, analyzes the controversial consumer-protection provisions and

4. See Bruce A. Markell, *From Property to Contract and Back: An Examination of Deposit Accounts and Revised Article 9*, 74 CHI.-KENT L. REV. 963 (1999).

5. See John F. Dolan, *Security Interests in Letter-of-Credit Rights*, 74 CHI.-KENT L. REV. 1035 (1999).

6. See Jane Kaufman Winn, *Electronic Chattel Paper Under Revised Article 9: Updating the Concept of Embodied Rights for Electronic Commerce*, 74 CHI.-KENT L. REV. 1055 (1999).

7. See Steven O. Weise, *The Financing of Intellectual Property Under Revised UCC Article 9*, 74 CHI.-KENT L. REV. 1077 (1999).

8. See Kenneth C. Kettering, *Repledge and Pre-Default Sale of Securities Collateral Under Revised Article 9*, 74 CHI.-KENT L. REV. 1109 (1999).

9. See Randal C. Picker, *Perfection Hierarchies and Nontemporal Priority Rules*, 74 CHI.-KENT L. REV. 1157 (1999).

10. See Neil B. Cohen & Edwin E. Smith, *International Secured Transactions and Revised UCC Article 9*, 74 CHI.-KENT L. REV. 1191 (1999).

reveals some unintended potential consequences of these compromise provisions.¹¹ Throughout the drafting process, other unintended potential consequences were eliminated from Revised Article 9 as a result of careful attention paid to the crafting of the statutory provisions. The Reporters were assisted in this regard by a task force on style, some of whose members have contributed an article sharing their thoughts on drafting uniform laws.¹²

The date we mentioned above, July 1, 2001, is the uniform effective date contemplated by Revised Article 9. The transition from Former Article 9 will not be painless, and it is not too early for lawyers to start planning for the transition. Bradley Smith, a member of the Drafting Committee and chair of its task force on transition, discusses the unusually detailed transition provisions of the Revised Article.¹³

Finally, after having been immersed in the revision effort for nearly a decade, first as Reporters to the PEB Study Committee and then as Reporters to the Article 9 Drafting Committee, we share our preliminary reflections on the success of the effort.¹⁴ In the process, we explain why the Revised Article takes the approach it does to various significant and controversial issues.

Of course, the final evaluation of Revised Article 9 must await years of experience in structuring, negotiating, enforcing, and litigating under its provisions. In the meanwhile, we are sure you will find the articles in this symposium to be of great value.

11. See Marion W. Benfield, Jr., *Consumer Provisions in Revised Article 9*, 74 CHI.-KENT L. REV. 1255 (1999).

12. See Louis F. Del Duca, Vincent C. DeLiberato, Jr., David L. Hostetter, Kenneth C. Kettering, & Steven O. Weise, *Simplification in Drafting—The Uniform Commercial Code Article 9 Experience*, 74 CHI.-KENT L. REV. 1309 (1999).

13. See Bradley Y. Smith, *New Article 9 Transition Rules*, 74 CHI.-KENT L. REV. 1339 (1999).

14. See Steven L. Harris & Charles W. Mooney, Jr., *How Successful Was the Revision of UCC Article 9?: Reflections of the Reporters*, 74 CHI.-KENT L. REV. 1357 (1999).