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MONTANA LAW AND THE UNIFORM COMMERCIAL CODE

An Appraisal

The Uniform Commercial Code is a comprehensive modernization of private commercial law for the purpose of simplifying and clarifying the law governing commercial transactions and of providing uniform commercial laws throughout the country. Since about 1900, the basic framework of the commercial law of the United States has been a series of uniform acts promulgated by the National Conference of Commissioners on Uniform State Laws. These acts consist of the Uniform Negotiable Instrument Law, the Uniform Sales Act, the Uniform Warehouse Receipts Act, the Uniform Bills of Lading Act, the Uniform Trust Receipts Act, and the Uniform Stock Transfer Act. The basic reason for the Code was the recognition that during the period since 1900 there has been tremendous growth in the commercial activity of the country; that in many areas new patterns of commerce have sprung up and in others material changes have occurred; that the 1900 versions of our commercial acts do not handle adequately these new patterns of activity and these changes, with the result that there is a very real need for an "updating" of the commercial law.

In response to a suggestion made in 1940 by William A. Schnader of Philadelphia, the National Conference of Commissioners on Uniform State Laws decided to undertake the drafting of a uniform commercial code. Because of the cost that would be involved and the complexity of the project, the Conference invited the American Law Institute to participate in the preparation of the draft of such a code. The necessary financial support was forthcoming from foundations, business concerns, and law firms. Preliminary work commenced in 1942 and the entire project was in process by 1945. The work continued without interruption until the code was finally adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1952. It was approved by the House of Delegates of the American Bar Association that same year. During its preparation, it is safe to say that more manhours of work were expended on it than had ever been devoted to the preparation of any proposed statute anywhere in the world.

The Uniform Commercial Code does not in any way constitute a revolution or an upheaval in the commercial law. Lawyers will not find that basic principles of the commercial law with which they have been familiar have been seriously affected. They will find that the places to look for answers are different, and to some extent that the language giving the answers is different. The Code does not touch upon real property in any way, except that one section deals with security interests in fixtures that may become attached to real estate. Similarly, it contains no criminal provisions. What the Code does deal with might be described as the "mechanical" rules of commerce, of sales, bills and notes, bank collections, documents of title, and investment securities.

In Montana, the Code would restate a substantial part of the rules of

law embodied in the existing uniform acts and in the Montana Codes. In so doing, it would bring these acts up to date by filling in gaps and removing sources of confusion and conflicts. Where old rules no longer work smoothly, they would be modified to comply more realistically with present conditions. Answers would be provided where none are presently available, in many instances; doubts and ambiguities would be resolved; inconsistencies would be removed.

By September, 1959, the Code had been enacted in Connecticut, Kentucky, Massachusetts, New Hampshire, and Pennsylvania. Initial steps in the preparation of the Code for introduction in the legislative sessions of 1960 and 1961 had been taken in twenty additional states. In addition to the commercial states of Indiana, Illinois, Ohio, Michigan, and New Jersey, there were included the western states of California, Washington, Oregon, Idaho, Wyoming, Utah, New Mexico, and North Dakota. In commenting upon the necessity and the prospects for enactment in the various jurisdictions, William Schnader, one of the members of the editorial board responsible for drafting the Code, stated in mid-1959:

With the ever expanding interests of the 50 states, the District of Columbia and Puerto Rico, non-uniformity of commercial law is a costly handicap to the expeditious movement of money and goods in both domestic and international commerce. It seems unthinkable that enlightened bankers, businessmen and lawyers should hold back the passage of the Commercial Code in any state.

Predictions concerning the outcome of litigation or the conclusions of legislative bodies are rather rash, but I do believe that before the end of 1961 at least a dozen states will have enacted the Code.¹

In this issue of the *Montana Law Review*, the faculty of the Law School, and two guest contributors, present an analysis of the Code in its relation to existing Montana law. We hope that it will serve as an incentive for an objective consideration of the need for modernization of the existing commercial law of the state. Although bankers, businessmen, and a host of other groups are interested and will be affected by the provisions of the Code, it is fitting that lawyers first consider the problem. Concurrent studies will undoubtedly be made by several other groups as well.

The Uniform Commercial Code has been described as one of the most important and the most expensive, in preparation, pieces of legislation ever drafted. Ease of commercial transactions in Montana would be enhanced if it were enacted. The experience of states that have enacted it and the prospects for enactment in other states where it is under consideration, indicate that it is feasible for enactment in Montana and is necessary if a desirable degree of uniformity is to be achieved.

This specialized consideration of a specialized subject by specialists in the fields represented by the articles in this issue, is presented for your examination and consideration. Great care and research have been neces-

¹Schnader, *Uniform Commercial Law — How Soon?*, 13 PERSONAL FINANCE LAW QUARTERLY REPORT 71 (1959),

sary in their preparation. Further work will be required, and will be completed, to reduce the Code to a form suitable for submission to the 1961 legislative session. This is in keeping with the policy of the Law School to explore areas of concern to the law and to the state within the limitations of our competence and of our facilities.

ROBERT E. SULLIVAN, Dean