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Steinheimer: Michigan Negotiable Instruments and the Uniform Commercial Code

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MICHIGAN NEGOTIABLE INSTRUMENTS AND THE UNIFORM COMMERCIAL CODE. By Roy L. Steinheimer. Ann Arbor: Michigan Legal Publications. 1960. Pp. ix, 169. \$1.50.

Promulgated in 1952 and adopted by the Pennsylvania Legislature in 1953, the Uniform Commercial Code has since been enacted in five additional states: Massachusetts, Kentucky, New Hampshire, Rhode Island and Connecticut. It is further reported that legislative consideration of it is now underway, or soon to begin, in fourteen additional jurisdictions.¹ Those who favor the Code can point with pride to the progress, albeit in a lei-

¹ *Uniform Commercial Code*, 2 B.C. IND. & COMM. L.R. 125 (1960).

surely manner, of a statute immensely more detailed and comprehensive than the Uniform Acts it seeks to replace. Its opponents can be cheered by its lack of success in Ohio, New York, and Indiana,² and its slow rate of progress in comparison with the important Uniform Acts which it would replace.³

It is expected that in every state which considers the Code there will be those who oppose it because it would change existing legal practices and those who are willing to accept it on faith because of the status of its sponsors. In between these extremes remain the vast majority of interested parties: members of the bar, the public, and various commercial interests. It is to this large class that Professor Steinheimer's study is addressed.

Current legal literature contains numerous general explanations of the Code, including law review articles, a series of publications by the Joint Committee of Continuing Legal Education of the American Law Institute and the American Bar Association,⁴ and even the Official Comments appearing after each Code section. If the Code should eventually be adopted in a large number of jurisdictions, the most important consideration in the remaining states might be whether the desire for uniformity outweighs the changes possibly made by it. At this early stage, however, the inquiry will more likely emphasize the particular merits and demerits of the statute. In this situation a detailed examination of the impact of the Code on the law of a particular jurisdiction must precede a reasoned evaluation of it. Professor Steinheimer has provided the basis for such a judgment on Article 3 of the Code in Michigan.

This work, financed by the Michigan Bar Foundation, is a product of the author's work on a special committee of the Michigan State Bar Association which is currently studying the Code. The presentation is straightforward. Each section in Article 3, which seeks to supplant the NIL, is reproduced and is followed by an examination of pertinent Michigan legal materials together with a statement of how the Code would change the present law. This format dictates that the book be used as a reference work and not as an introduction to the Code. The section-by-section approach presupposes some familiarity with negotiable instruments problems and the structure of Article 3. For example, under present law, questions may arise as to whether a signature on a negotiable instrument was made in the

² Interesting descriptions of the trials and tribulations of the Code in several states may be found in the NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS HANDBOOKS 100-06, 171-74 (1957); 95-117 (1953); 151-63, 189-93 (1959).

³ If the date of the first enactment is the most significant for comparative purposes, the figures in parentheses following the listed Uniform Acts indicate the additional number of jurisdictions which adopted the specified act within a seven-year period comparable to the years 1953-1960: UNIFORM WAREHOUSE RECEIPTS ACT (30), UNIFORM NEGOTIABLE INSTRUMENTS LAW (23), UNIFORM BILLS OF LADING ACT (21), UNIFORM TRUST RECEIPTS ACT (12), UNIFORM SALES ACT (10).

⁴ HAWKLAND, SALES AND BULK SALES (1958); BRAUCHER, DOCUMENTS OF TITLE (1958); CLARKE, BAILEY & YOUNG, BANK DEPOSITS AND COLLECTIONS (1959); HAWKLAND, COMMERCIAL PAPER (1959); SPIVAK, SECURED TRANSACTIONS (1960).

capacity of maker or indorser. Under section 3-402 of the Code the signer is liable only as an indorser unless the instrument clearly indicates that the signature is in another capacity. But what is to be done with a note containing the words "I promise to pay" and signed by two parties? Section 3-118 (e) precludes the argument that they are both liable only as indorsers, and not as makers, by making them jointly and severally liable in the absence of other specifications in the instrument. Further, the related problem of the effect of words of guaranty is governed by sections 3-202 (4) and 3-416. Professor Steinheimer assumes the reader knows this and his discussion starts from there.⁵

The value of such an approach depends upon the aim of the book. If it were assumed that the book was to be read by those completely ignorant of the Code, then this treatment of various provisions would seriously diminish the value of the book. On the other hand, an initial choice must be made. If the author is to tell in detail what each particular section does, the treatment of various sections under one topic becomes impractical because of the mass of material involved. Here Professor Steinheimer has chosen to speak to the well informed, those who are already familiar with the Code and official comments, and his book is closer to an annotated statute than it is to a text.

In the introduction, it is stated: "It has been . . . [the author's] purpose simply to indicate what changes would be made and the nature of these changes leaving it to the reader to form his own judgment as to their desirability."⁶ He appears, in this respect, to bend over backward. Although he has stated a position favorable to Article 3 elsewhere,⁷ the few instances of evaluation in this book indicate situations where the Code might have been improved.⁸ Even where alternative sections are provided for adoption, he has limited himself to stating which is most in accord with current Michigan practice.⁹

Since the book is intended to compare the Code with Michigan law, the initial policy decisions embodied in the Code are not always highlighted. Under section 20 of the NIL a question was presented concerning whether an unauthorized agent signing a negotiable instrument with full disclosure of his representative capacity became liable on the instrument in addition to his liability on a warranty theory. In a leading New York case,¹⁰ Judge Cardozo found a negative implication in section 20 creating such liability,

⁵ Pp. 33, 48-49, 77-78, 111-12. Cf. HAWKLAND, *COMMERCIAL PAPER* 34-35 (1959).

⁶ Pp. v-vi.

⁷ Steinheimer, *Negotiable Instruments and the Uniform Commercial Code*, Mich. S.B.J., Aug. 1960, pp. 20, 25.

⁸ E.g., pp. 10, 29 nn.46, 57.

⁹ See, e.g., pp. 36-37 discussing § 3-121.

¹⁰ *New Georgia Nat'l Bank v. Lippman*, 249 N.Y. 307, 164 N.E. 108 (1928); accord, *RESTATEMENT (SECOND), AGENCY* § 324(2), comment a, illustration 4 (1958).

a view which has not received the approval of the Michigan Supreme Court.¹¹ Section 3-404(1) of the Code imposes liability on the agent in favor of any person who in good faith pays the instrument or takes it for value. If we assume that the alleged principal was insolvent at the time of the transaction, this involves a policy decision that the original payee should enjoy an advantage because a negotiable instrument is involved in the transaction.¹² Professor Steinheimer limits himself to an indication that the Michigan result would be changed,¹³ and those who wish to inquire into the basic premises of the Code on this point must turn elsewhere.

In addition to its comparative function, the book serves two other purposes. First, it is a current study of Michigan negotiable instruments law. Unfortunately, the lack of an index diminishes its value to the practitioner who is unfamiliar with the Code. Second, and perhaps more important, it demonstrates the impact of Article 3 upon the law of a fairly typical jurisdiction. Careful studies of this kind, especially where there is a common Uniform Act in the background, have value extending beyond the boundaries of one state. For those states yet to begin an intensive investigation of their own, Professor Steinheimer's book is one which should be studied carefully.

One question remains after examining the book. Will effective use be made of it? Of course the reading is not very light. The subject matter is one which, at least to the reviewer, has never possessed a great deal of intrinsic excitement. But more important than this is the attitude of those who must pass judgment on the Code and for whose use this book is intended. The easy way is to take another person's opinion. The difficult, but better, way is to study Professor Steinheimer's book and similar works and puzzle through the new statutory scheme. It is hoped that the latter course will be pursued in Michigan and elsewhere. With excellent material such as this available, the difficulty of making a reasoned evaluation of Article 3 is greatly diminished, and the obligation to do so is correspondingly increased.

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¹¹ *Annis v. Pfeiffer*, 278 Mich. 692, 271 N.W. 568 (1937).

¹² The advantage is that the original payee may recover on the instrument instead of being required to prove damages caused by breach of warranty of authority. This advantage is substantial if the purported principal is insolvent and the warranty theory would not produce an amount equal to the amount of the instrument. Cf. RESTATEMENT (SECOND), AGENCY § 329, comment *j* (1958).

Professor Hawkland argues that the Code rule is justified because someone must be liable on the instrument. Perhaps this is true when the instrument has passed from the payee to a subsequent holder, but there appears to be no policy justifying creation of an additional liability of agent to payee when only rights of the original parties to the transaction are in question. See HAWKLAND, COMMERCIAL PAPER 33 (1959).

¹³ Pp. 81-82.