

# *The UCC and You*



## *First Edition*

*A brief overview of Commercial law, contracts, and how they may or may not involve you. The material is intended only for educational purposes and does not render any legal, professional nor financial advice.  
This educational book is for education only.*

*Things are constantly changing – strive to stay current.*

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## *I. Overview & history of the UCC*

Before you dive into the depths of the Uniform Commercial Code (UCC) I suggest you have some direct and black and white, on point research materials to help guide you through a complete understanding of the clutches of the UCC. Some of the best books found for this adventure come straight from the American Bar Association itself. Please take time to not only get some of these books but make sure you use them in their entirety for a CLEAR understanding of ALL terms and applications. There are many books; some of particular interest are:

How to order the UCC books from The American Bar.

1. The Portable UCC
2. The ABC's of the UCC. Article 9
3. The New Article 9
4. Default Provisions of the Revised Article 9
5. ABC's of the UCC. Article 8

These can be ordered from the American Bar at:

ABA Publications  
P.O. Box 10892  
Chicago, IL 60610-0892

1 (800) 285-2221 toll free  
1 (312) 988-5568 fax to bar

service@abanet.org email to American Bar

Now before we begin the journey we suggest you have a quick reference to certain section of the code itself. This should help you find certain things based upon their topics.

Article 1. - General Provisions	(1995)
Article 2. Sales	(1995)
Article 2A. Leases	(1990)
Article 3. Negotiable Instruments	(1991)
Article 4. Bank Deposit	(1994)
Article 4A. Funds Transfers	(1994)
Article 5. Letters of Credit	(1995)
Article 6. Bulk Transfers and [Revised] - Bulk Sales	(1989)
Article 7. Warehouse Receipts, Bills of Lading and Other Documents of Title	(1966)
Article 8. Investment Securities	(1994)
Article 9. Secured Transactions	(1999)

Now before you get right into things there are a couple things one must have a complete understanding of. This takes us back into American history to see what the UCC is itself and where it came from.

## **What the Secretary of State in Michigan says regarding the UCC**

UCC Overview

[http://www.michigan.gov/sos/0,1607,7-127-1631\\_8851-29412--,00.html](http://www.michigan.gov/sos/0,1607,7-127-1631_8851-29412--,00.html)

The Uniform Commercial Code law governs commercial transactions. The code includes eleven articles covering a variety of areas such as sales, negotiable instruments, bank deposits and collections, and investment securities.

Article 9 of the Uniform Commercial Code (UCC), titled secured transactions, designates the office of the Secretary of State as the place for the filing and searching of secured transaction documents.

Financing statements are filed as a public notice of a security interest in collateral. Record searches are requested to reveal financing statements filed against an organization or individual. For example, when a debtor (borrower) pledges collateral to obtain a loan, a UCC financing statement tells a secured party (creditor) whether others have financing statements against the same collateral. Filing a UCC financing statement is a protective measure because it provides a public notice to other parties. Debtors also benefit because the notice system helps them obtain business funding. Legally, it puts the creditor in the position of a secured creditor; and a perfected UCC financing statement may be acted on in case of default. In the event of a bankruptcy proceeding, the creditor will be in a better position to enforce its legal rights.

## **Bit of Background and Overview How We Got Here & The Way Out**

The information is compiled right from the UCC Code. Right from the latest changes, and from some of the most powerful codes this planet has ever seen;

The whole thing started obviously when we had 13 signers to an Original Declaration of Independence. That was an underlying contract that was signed by thirteen different leaders that said "No More." "We are done, we are independent from you. We are going to rule ourselves" And that contract led up to another one which is known as the Constitution and another The Bill of Rights the Articles of the Confederation etc., etc. etc

These contracts are what formed a nation here over 200 hundred years ago. It was formed under contract and Sub-formed under codes, rules and regulations. In 1871 the United States created Act that was called the District of Columbia Organic Act. At that point in time there was only a government and a people, individually based upon the contracts that were written almost a hundred years prior to The Constitution, the Articles of Confederation, etc. etc....

This new act, called the District of Columbia Organic Act created the first Corporate Government that the United States of America has ever seen, and it created a new Corporation that most people don't see let alone believe. Because it's Corporate America, it has everything to do with commerce; it's under Contract Law. Shortly thereafter, they created what is known as the Bureau of Vital Statistics. The Bureau of Vital Statistics is what formed a birth certificate/Certificate of Title/Chattel paper. With the help of the 14<sup>th</sup> Amendment and the newly created Bureau of Vital Statistics this birth certificate is what created the first ever in America Corporate person known as a straw-man, a juristic person or any other kind of fictitious corporation that you can put in your mind and just think about, it is a fiction, A third party front, a dummy. It is not you it is a word that reflects the Certificate of title/chattel paper. It's a contract.

These contracts enabled the Corporate United States to contract with a Corporate us. What people have to understand is how they incorporated themselves. They see that one of the biggest problems with some of past or even present information that's out there is a lot of people want to go back to the law. Well, under these contracts that we're speaking of, you became a surety. The surety was responsible to pay for this entire Corporation's new

existence such as the Federal Reserve, such as the IRS, such as the Social Security Administration. I hope that everyone out there understands why this corporation is starting to exist and how it came about and how they get to us. They don't deal with us they deal with our juristic person. The fictional you. Your Driver's license, your social security card, most all bills that you get, most anything you get will have your juristic person's name, it's the commerce created by birth certificate and the 14<sup>th</sup> amendment citizen name. It is a created US citizen you, not the real flesh and blood you. It is your front.

When they started to contract and they switched over our gold, which was in 1933, they took all of the gold and they started using a paper currency. Which is a Federal Reserve Note (FRN), the dollar bills that we carry around. When they created that new little creature the Corporate America was free to use as much of this paper currency it wanted to. It didn't have to use the gold and silver so it could just exchange promises from one hand to another. Again, you have to sit back and understand that a Corporation is coming after you. There is no Mr. General Motors -- General Motors is nobody. It is just a fiction.

The information that we've gotten and use is compiled from many years of research, study, trial, and errors.

If you look inside the Bill of Rights, most people know we got them, but most people don't understand what it really is or does. You have to stand back and look at the overlying contract. Article One through Ten all are a contract for the agents and agency's of the government designed to serve and protect us and these 10 Articles are there to protect us and limit them. Again it is their contract not ours -- it is their agreement, under oath, not our rights. Our rights come from the highest power - not any secular government.

So what the UCC does is actually goes in, it allows you to take those contracts and make a claim against the listed properties. Once you have made a claim, you have an interest in the property and now consideration needs to be made in order for you to loose your priority in that interest. Or in other words they have to buy an interest in order to gain a priority. Of

course you could just rescind all documents as well but please understand this study course before trial-by-error occurs for you.

Consent is the largest issue in contract law. It's something that has worked in all levels; it works everywhere because it is the Law. Law is defined as a rule or regulation from a government to ITS citizens. When you look into a consensual encounter, or voluntary compliance, the first thing that happens when you get pulled over for instance, what happens to you? What do they do? What's the first thing they ask you for? "Can I see your driver's license, registration?" or "Can I see your papers?" They are asking you to voluntarily give them their papers, agreements, so that they can charge you. Why? Because they OWN the contract and they can do that by your agreement to the contract. You signed that driver license correct? You paid for the license correct? You didn't know it, but you turned all your rights into certain privileges and you went in and asked them for it and paid them for it and they have the proof of it simply by seeing your STATE OF \_\_\_\_\_ DRIVER LICENSE.

The Fourth amendment is about consent. And the Fourth amendment is probably the most powerful amendment, powerful law, and powerful set of words in Law. If you have anything that you would like to study on it should be the Fourth amendment. (Brown vs. TX). Ask yourself this question after reading it. Does it grant any rights or does it impose a liability? After asking this ask yourself to whom does this liability hold to? You or the sworn agents under oath?

Consent. I do not agree or consent. What they are doing to you is that "They" as a corporation are coming up to you as a corporation and asking you to contract with them. They have no evidence, nor can they deal with anything but that fiction. "I'm sorry; I don't want to do business with you." And the information works because of the way that the code is set up, it enables you to make claims on your property. That's what the UCC is, so many people that I talk to in the past have said, "You file your UCC and your problems will go away." That is so far from the truth. I don't even want to comment any further than that.



A UCC is an asset protector and it allows you to register certain property that you are making a claim upon. That is what it is. If there is no claim, you can't claim back on it. So right now, up until this point if you're new to this, you didn't understand any of what was just said, but it's starting to become clear to you now as though it's a corporation against a corporation and you have to step back behind the scene there and realize that the IRS, the State of \_\_\_\_\_, the United States, are all fictions coming after you. They don't exist other than in your mind and in your agreement. You can't call "Mr. IRS" to the stand in a court-room. He won't show up. We've been looking for him for years. We can't find him. We've been looking for another guy called "Society", for quite some time, but we can't find him either. They don't exist. So, if they don't exist, then they can't make the claim on the property. You can though, once you make a proper claim, get a claim in there. If anyone was to try to infiltrate your property, NOW you have stated a claim, in which relief can be granted. You now hold a Superior claim. Do you really think they will say they are entitled to YOUR name?

Just a synopsis: There is a corporate government and a real government and they have created a fictional you, which is known as a juristic person. And this corporate government is doing just what McDonald's is doing when you pull up to McDonald's. "May I help you?" "Sure, I'll take a #3 with a coke" "OK that will cost you \$5.14". They are conducting business with you. And you have the right, every state Citizen has this right, to where you can or cannot, it's your option, to conduct business with whomever you wish to. If you don't wish to do business with somebody, you don't have to. No one can force you to. It is the same concept. It's just we set our groundwork and do our claim ahead of time. That way it will minimize chances of an issue. Test for you. Send a FOIA to an Attorney General and ask them if any corporation can compel you to do business with them. When they tell you "No" send another asking if the USA, IRS, STATE OF \_\_\_\_\_ operates under commerce. (See your response or their sidestepping the question. Seems like an easy question so if they resist then you may have something.)

**Now for some history on this topic from the legal end if this.**

In 1950, or so, some major change took place in the way government came about. This may have been in response to the 1948 Judiciary Act that created the USDC's. On July 31, 1945. Pursuant to I: 8:17 and IV: 3:2 Congress passed the District of Columbia Organic Act on February 21, 1871 (Chapter 62, 16 Stat. 419) forming the Corporation known as District of Columbia. This corporation was reorganized June 11th, 1878 (Chapter 180, 20 Stat. 102) and renamed "United States Government" and it trademarked the names "United States", "U.S.", "U.S.A.", "USA", and "America".

The states of the Union all organized as corporations only much later - between 1962 and 1968. Look for the Administrative Organization Act or some such in your state. These acts created corporations known as STATE OF \_\_\_\_\_. This corporation was charged with the responsibility of carrying out the "business needs" of the national government. This harkens back to a Discussion I read earlier on suing the sovereign when it is not the sovereign being sued. It issued bonds to cover its expenses until 1912, when there were more bonds due than there was money of account in the Treasury to pay for the bonds.

It was the banking families who had bought up these bonds, and they became due and payable. The corporation asked these banking families if they could borrow the money to pay for the bonds and the families refused. Instead, provisions were made to fund the corporation (but not the government) with securities issued against monies held by the banking families. This occurred on Jekyll Island, Georgia in 1913. These securities were known as Federal Reserve Notes.

Even though the government could not sign this contract, the Corporation could and did. This was a private contract between private corporations. We can skip the Trading with the Enemy Act of 1917 and the Emergency War Powers Act of 1933, which are important, but not for the purposes of this discussion.

Which brings us to the Act of July 31, 1945, ch. 339, Sec. 2, 59 Stat. 512.

22 USC 286. Acceptance of membership by United States in International Monetary Fund The President is hereby authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and

Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State. (July 31, 1945, ch. 339, Sec. 2, 59 Stat. 512.)

Notes on Title 22, Section 286 SOURCE (July 31, 1945, ch. 339, Sec. 2, 59 Stat. 512.)

SHORT TITLE OF 1968 AMENDMENT Pub. L. 90-349, June 19, 1968, 82 Stat. 188 (enacting sections 286n to 286r of this title and amending sections 412, 415, 417, and 467 of Title 12, Banks and Banking), is known as the "Special Drawing Rights Act". For complete classification of this Act to the Code, see Short Title note set out under section 286n of this title and Tables.

#### SHORT TITLE

Section 1 of act July 31, 1945, provided: "this act (enacting this Subchapter and amending section 822a of former Title 31, Money and Finance) may be cited as the 'Bretton Woods Agreements Act'."

#### PAR VALUE MODIFICATION

For Congressional direction that the Secretary of the Treasury maintain The value in terms of gold of the holdings in United States dollars of the International Monetary Fund and of the International Bank for Reconstruction and Development following the establishment of a par value of the dollar at \$38 for a fine troy ounce of gold pursuant to the Par Value Modification Act and for the authorization of the appropriation necessary to provide such maintenance of value, see section 5152 of Title 31, Money and Finance.

#### CROSS REFERENCES

Advancement of human rights through United States assistance policies with international financial institutions, see section 262d of this title. Increase in lending authority of the Export-Import Bank of Washington; see sections 635 to 635h of Title 12, Banks and Banking. United States membership in the United Nations Food and Agriculture Organization, see sections 279 to 279d of this title. and Sec. 286n. Special Drawing Rights

The President is hereby authorized (a) to accept the amendment to the Articles of agreement of the International Monetary Fund (hereinafter referred to as the "Fund"), attached to the April 1968 report by the Executive Directors to the Board of Governors of the Fund, for the purpose of (i) establishing a facility based on Special Drawing Rights in the Fund and (ii) giving effect to certain modifications in the

present rules and practices of the Fund, and (b) to participate in the special drawing account established by the amendment.

22 USC 611 Sec. 611. Definitions As used in and for the purposes of this subchapter -

- (a) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals;
- (b) The term "foreign principal" includes -
- (1) A government of a foreign country and a foreign political party;
  - (2) [snip]
  - (3) a \*\*\*partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.
- (c) Except [1] as provided in subsection (d) of this section, the term "agent of a foreign principal" means -

[1] So in original. Probably should be "except".

- (1) Any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of \*\*\*whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal\*\*\*, and who directly or through any other person -
  - (i) engages within the United States in political activities for or in the interests of such foreign principal;
  - (ii) Acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
  - (iii) within the United States \*\*\*solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
  - (iv) within the United States \*\*\*represents the interests of such foreign principal before any agency or official of the Government of the United States; and
- (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

June 8, 1938, ch. 327, Sec. 1, 52 Stat. 631

Wouldn't that make the Sec Treas an agent for a foreign principal? Sec. 219. Officers and employees acting as agents of foreign principals

Now that you have a general idea it is time to cross reference the state or should I know say STATES?

The United States Code (I believe in Title 12-Describing Jurisdiction states that Federal jurisdiction ends at the State Borders (3 miles offshore) and is over Federal Lands within the State Boundaries. We living outside D.C., Somoa, U.S. Virgin Islands, Mariannas Islands, are not within Federal Jurisdiction.

Now let's take a look at 1 USC Chapter 3 Section 204

Sec. 204. - Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States -

(a) United States Code. -

The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

Notice the word of is highlighted above. According to Black's Law Dictionary the term "of" means: "indicating origin, source. Associated with or **connected with**, usually in some casual relation, efficient, material, formal, or final."

Now if the United States is defined as a "federal Corporation" and "of" means "connected with" now 1 USC Sec. 204 in their defined words really means: (See 28 USC 3001(15) for United States Defined.)

Sec. 204. - Codes and Supplements as evidence of the laws of **(federal Corporation)**; citation of Codes and Supplements In all courts, tribunals, and public offices **(connected with)** the **(federal Corporation)**, at home or abroad, of the **(federal Corporation)**, and of each State, Territory, or insular possession **(connected with)** the **(federal Corporation)**-

(a) United States Code. -

The matter set forth in the edition of the Code of Laws of the **(federal Corporation)** current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the **(federal Corporation)**, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is

included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts (connected with) the (federal Corporation), the several States, and the Territories and insular possessions (connected with) the (federal Corporation).

## **THE STORY OF THE BUCK ACT**

by Richard McDonald

edited by Mitch Modeleski

In order for you to understand the full import of what is happening, I must explain certain laws to you.

When passing new statutes, the Federal government always does everything according to the principles of law. In order for the Federal Government to tax a Citizen of one of the several states, they had to create some sort of contractual nexus. This contractual nexus is the "Social Security Number".

In 1935, the federal government instituted Social Security. The Social Security Board then created 10 Social Security "Districts". The combination of these "Districts" resulted in a "Federal area" which covered all the several states like a clear plastic overlay.

In 1939, the federal government instituted the "Public Salary Tax Act of 1939". This Act is a municipal law of the District of Columbia for taxing all federal and state government employees and those who live and work in any "Federal area".

Now, the government knows it cannot tax those state Citizens who live and work outside the territorial jurisdiction of Article 1, Section 8, Clause 17 (1:8:17) or Article 4, Section 3, Clause 2 (4:3:2) in the U.S. Constitution. So, in 1940, Congress passed the "Buck Act", 4 U.S.C.S. Sections 105-113. In Section 110(e), this Act authorized any department of the federal government to create a "Federal area" for imposition of the "Public Salary Tax Act of 1939". This tax is imposed at 4 U.S.C.S. Sec. 111. The rest of the taxing law is found in the Internal Revenue Code. The Social Security Board had already created a "Federal area" overlay.

4 U.S.C.S. Sec. 110(d). The term "State" includes any Territory or possession of the United States. 4 U.S.C.S. Sec. 110(e). The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

There is no reasonable doubt that the federal "State" is imposing an excise tax under the provisions of 4 U.S.C.S. Section 105, which states in pertinent part: Sec. 105. State, and so forth, taxation affecting Federal areas; sales or use tax

(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

Irrespective of what the tax is called, if its purpose is to produce revenue, it is an income tax or a receipts tax under the Buck Act [4 U.S.C.A. Secs. 105-110]. *Humble Oil & Refining Co. v. Calvert*, 464 SW 2d. 170 (1971), *affd* (Tex) 478 SW 2d. 926, *cert. den.* 409 U.S. 967, 34 L.Ed. 2d. 234, 93 S.Ct. 293. Thus, the obvious question arises: What is a "Federal area"?

A "Federal area" is any area designated by any agency, department, or establishment of the federal government. This includes the Social Security areas designated by the Social Security Administration, any public housing area that has federal funding, a home that has a federal bank loan, a road that has federal funding, and almost everything that the federal government touches through any type of aid. *Springfield v. Kenny*, 104 N.E. 2d 65 (1951 App.). This "Federal area" attaches to anyone who has a Social Security Number or any personal contact with the federal or state governments. Through this mechanism, the federal government usurped the Sovereignty of the People, as well as the Sovereignty of the several states, by creating "Federal areas" within the boundaries of the states under the authority of Article 4, Section 3, Clause 2 (4:3:2) in the federal Constitution, which states:

2. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Therefore, all U.S. citizens [i.e. citizens of the District of Columbia] residing in one of the states of the Union, are classified as property, as franchisees of the federal government, and as an "individual entity". See *Wheeling Steel Corp. v. Fox*, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773. Under the "Buck Act", 4 U.S.C.S. Secs. 105-113, the federal government has created a "Federal area" within the boundaries of all the several states.



This area is similar to any territory that the federal government acquires through purchase, conquest or treaty, thereby imposing federal territorial law upon all people in this "Federal area". Federal territorial law is evidenced by the Executive Branch's yellow-fringed U.S. flag flying in schools, offices and all courtrooms.

You must live on land in one of the states in the Union of several states, not in any "Federal State" or "Federal area", nor can you be involved in any activity that would make you subject to "federal laws". You cannot have a valid Social Security Number, a "resident" driver's license, a motor vehicle registered in your name, a "federal" bank account, a Federal Register Account Number relating to Individual persons [SSN], (see Executive Order Number 9397, November 1943), or any other known "contract implied in fact" that would place you within any "Federal area" and thus within the territorial jurisdiction of the municipal laws of Congress. Remember, all acts of Congress are territorial in nature and only apply within the territorial jurisdiction of Congress. (See *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356-357 (1909); *U.S. v. Spelar*, 338 U.S. 217, 222, 94 L.Ed. 3, 70 S.Ct. 10 (1949); *New York Central R.R. Co. v. Chisholm*, 268 U.S. 29, 31-32, 69 L.Ed. 828, 45 S.Ct. 402 (1925).)

There has been created a fictional Federal "State within a state". See *Howard v. Sinking Fund of Louisville*, 344 U.S. 624, 73 S.Ct. 465, 476, 97 L.Ed. 617 (1953); *Schwartz v. O'Hara TP. School Dist.*, 100 A. 2d. 621, 625, 375 Pa. 440. (Compare also 31 C.F.R. Parts 51.2 and 52.2, which also identify a fictional State within a state.) This fictional "State" is identified by the use of two-letter abbreviations like "CA", "AZ" and "TX", as distinguished from the authorized abbreviations like "Calif.", "Ariz." and "Tex.", etc. This fictional State also uses ZIP codes which are within the municipal, exclusive legislative jurisdiction of Congress.

This entire scheme was accomplished by passage of the "Buck Act", 4 U.S.C.S. Secs. 105-113, to implement the application of the "Public Salary Tax Act of 1939" to workers within the private sector. This subjects all private sector workers who have a Social Security number to all state and federal laws "within this State", a "fictional Federal area" overlaying the land in California and in all other states in the Union. In California, this is established by California Form 590, Revenue and Taxation.

All you have to do is to state that you live in California. This establishes that you do not live in a "Federal area" and that you are exempt from the Public Salary Tax Act of 1939 and also from the California Income Tax for residents who live "in this State".

The following definition is used throughout the several states in the application of their municipal laws which require some sort of contract for proper application. This definition is also included in all the codes of California, Nevada, Arizona, Utah and New York:

"In this State" or "in the State" means within the exterior limits of the State ... and includes all territories within such limits owned or ceded to the United States of America. (please remember the United states is CORPORATE thus State is a sub-corporation of the corporation)

This definition concurs with the "Buck Act" supra which states:

110(d) The term "State" includes any Territory or possession of the United States.

110(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

So, do some research - I have given you all the proper directions in which to look for the jurisdictional nexus that places you within the purview of the federal government.

So now it all kind of makes sense right? Well if not, I trust the graph on the next page shows you how the mechanics works.

## **Memorandum of Law on the Name [Author Unknown]**

Many people are involved in diligent research concerning the use of all capital letters for proper names, e.g., JOHN PAUL JONES as a substitute for John Paul Jones in all court documents, driver's licenses, bank accounts, birth certificates, etc. Is the use of all capital letters to designate a name some special English grammar rule or style? Is it a contemporary American style of English? Is the use of this form of capitalization recognized by educational authorities? Is this an official judicial or U.S. government rule and/or style of grammar? Why do attorneys, court clerks, prosecutors judges, insurance companies, banks, credit card companies, utility companies, etc. always use all capital letters when writing a proper name?

What English grammar experts say?

One of the foremost authorities on American English grammar, style, composition, and rules is The Chicago Manual of Style. The latest (14th) Edition, published by the University of Chicago Press, is internationally known and respected as a major contribution to maintaining and improving the standards of written or printed text. Since we can find no reference in their manual concerning the use of all capitalized letters with a proper name or any other usage, we wrote to the editors and asked this question:

"Is it acceptable, or is there any rule of English grammar, to allow a proper name to be written in all capital letters? For example, if my name was John Paul Jones, can it be written as JOHN PAUL JONES? Is there any rule covering this?"

The Editorial Staff of the University of Chicago answered:

"Writing names in all caps is not conventional; it is not Chicago style to put anything in all caps. For instance, even if 'GONE WITH THE WIND' appears on the title page all in caps, we would properly render it 'Gone with the Wind' in a bibliography. The only reason we can think of to do so is if you are quoting some material where it is important to the narrative to preserve the casing of the letters.

"We're not sure in what context you would like your proper name to appear in all caps, but it is likely to be seen as a bit odd."

Law is extremely precise. Every letter, capitalization, punctuation mark, etc., in a legal document is utilized for a specific reason and has legal (i.e. deadly force) consequences. If, for instance, one attempts to file articles of incorporation in the office of a Secretary of State of a State, if the exact title of the corporation down to every jot and tittle - is not exactly the same each and every time the corporation is referenced in the documents to be filed, the Secretary of State will refuse to file the papers. This is because each time the name of the corporation is referenced it must be set forth identically in order to express the same legal entity. The tiniest difference in the name of the corporation identifies an entirely different legal person.

It is therefore an eminently valid, and possibly crucial, question as to why governments, governmental courts, and agencies purporting to exist (in some undefined, unproved manner) within the jurisdiction of "this state" insist on always capitalizing every letter in a proper name.

Mary Newton Bruder, Ph.D., also known as The Grammar Lady, who established the Grammar Hotline in the late 1980's for the "Coalition of Adult Literacy," was asked the following question:

"Why do federal and state government agencies and departments, judicial and administrative courts, insurance companies, etc., spell a person's proper name in all capital letters? For example, if my name is John Paul Jones, is it proper at any time to write my name as JOHN PAUL JONES?"

Dr. Bruder's reply was short and to the point: "It must be some kind of internal style. There is no grammar rule about it."

It seemed that these particular grammatical experts had no idea why proper names were written in all caps, so we began to assemble an extensive collection of reference books authored by various publishers, governments, and legal authorities to find the answer.

What English grammar reference books say?

### **Manual on Usage & Style**

One of the reference books obtained was the "Manual on Usage & Style," Eighth Edition, ISBN I-878674-51-X, published by the Texas Law Review in 1995. Section D, CAPITALIZATION, paragraph D: 1:1 states:

"Always capitalize proper nouns... [Proper nouns], independent of the context in which they are used, refer to specific persons, places, or things (e.g., Dan, Austin, Rolls Royce)."

Paragraph D: 3:2 of Section D states:

"Capitalize People, State, and any other terms used to refer to the government as a litigant (e.g., the People's case, the State's argument), but do not capitalize other words used to refer to litigants (e.g., the plaintiff, defendant Manson)."

Either no attorney, judge, or law clerk in Texas has ever read the recognized law style manual that purports to pertain to them, or the act is a deliberate violation of the rules for undisclosed reasons. In either ignorance ("ignorance of the law is no excuse") or violation (one violating the law he enforces on others is acting under title of nobility and abrogating the principle of equality under the law) of law, they continue to write "Plaintiff," "Defendant," "THE STATE OF TEXAS" and proper names of parties in all capital letters on every court document.

### **The Elements of Style**

Another well-recognized reference book is "The Elements of Style," Fourth Edition, ISBN 0-205-30902-X, written by William Strunk, Jr. and E.B. White, published by Allyn & Bacon in 1999. Within this renowned English grammar and style reference book, is found only one reference to capitalization, located within the Glossary at "proper noun," page 94, where it states:

"The name of a particular person (Frank Sinatra), place (Boston), or thing (Moby Dick). Proper nouns are capitalized."

There's an obvious and legally evident difference between capitalizing the first letter of a proper name as compared to capitalizing every letter used to portray the name.

### **The American Heritage Book of English Usage**

The American Heritage Book of English Usage, A Practical and Authoritative Guide to Contemporary English, published in 1996, at Chapter 9, E-Mail, Conventions and Quirks, Informality, states:

"To give a message special emphasis, an E-mailer may write entirely in capital letters, a device E-mailers refer to as screaming. Some of these visual conventions have emerged as a way of getting around the constraints on data transmission that now limit many networks".

Here is a reference source, within contemporary modern - English, that states it is of an informal manner to write every word of - specifically – an electronic message, a.k.a. e-mail, in capital letters. They say it's "screaming" to do so. By standard definition, we presume that is the same as shouting or yelling. Are all judges, as well as their court clerks and attorneys, shouting at us when they corrupt our proper names in this manner? (If so, what happened to the decorum of a court if everyone is yelling?) Is the insurance company screaming at us for paying the increased premium on our Policy? This is doubtful as to any standard generalization, even though specific individual instances may indicate this to be true. It is safe to conclude, however, that it would also be informal to write a proper name in the same way.

Does this also imply that those in the legal profession are writing our Christian names informally on court documents? Are not attorneys and the courts supposed to be specific, formally writing all legal documents to the "letter of the law?" If the law is at once both precise and not precise, what is its significance, credibility, and force and effect?

### **New Oxford Dictionary of English**

"The New Oxford Dictionary of English" is published by the Oxford University Press. Besides being considered the foremost authority on the British English language, this dictionary is also designed to reflect the way language is used today through example sentences and phrases. We submit the following definitions from the 1998 edition:

"Proper noun (also proper name)."

"Noun."

"A name used for an individual person, place, or organization, spelled with an initial capital letter, e.g. Jane, London, and Oxfam."

Name."

"Noun."

"1. A word or set of words by which a person, animal, place, or thing is known, addressed, or referred to: my name is Parsons, John Parsons. Kalkwasser is the German name for limewater."

"Verb."

"2. Identify by name; give the correct name for: the dead man has been named as John Mackintosh."

"Phrases."

"3. In the name of. Bearing or using the name of A specified person or organization: a driving license in the name of William Sanders."

From the "Newbury House Dictionary of American English," published by Monroe Allen Publishers, Inc., (1999):

"name"

"n. I [C] a word by which a person, place, or thing is known: Her name is Diane Daniel."

We can find absolutely no example in any recognized reference book that specifies or allows the use of all capitalized names, proper or common. There is no doubt that a proper name, to be grammatically correct, must be written with only the first letter capitalized, with the remainder of the word in a name spelled with lower case letters.

### **US Government Style Manual**

Is the spelling and usage of a proper name defined officially by US Government? Yes. The United States Government Printing Office in their "Style Manual," March 1984 edition (the most recent edition published as of March 2000), provides comprehensive grammar, style and usage for all government publications, including court and legal writing.

Chapter 3, "Capitalization," at § 3.2, prescribes rules for proper names:

"Proper names are capitalized. [Examples given are] Rome, Brussels, John Macadam, Macadam family, Italy, Anglo-Saxon."

At Chapter 17, "Courtwork, the rules of capitalization," as mentioned in Chapter 3, are further reiterated:

"17.1."

"Court work differs in style from other work only as set forth in this section; otherwise the style prescribed in the preceding sections will be followed."

After reading §17 in entirety, I found no other references that would change the grammatical rules and styles specified in Chapter 3 pertaining to capitalization.

At § 17.9, this same official US Government manual states:

"In the titles of cases the first letter of all principal words are capitalized, but not such terms as defendant and appellee."

This wholly agrees with Texas Law Review's Manual on "Usage & Style" as referenced above.

Examples shown in § 17.12 are also consistent with the aforementioned §17.9 specification: that is, all proper names are to be spelled with capital first letters; the balance of each spelled with lower case letters.

### **Grammar, Punctuation, and Capitalization**

"The National Aeronautics and Space Administration" (NASA) has published one of the most concise US Government resources on capitalization. NASA publication SP-7084, "Grammar, Punctuation, and Capitalization "A Handbook for Technical Writers and Editors" was compiled and written by the NASA Langley Research Center in Hampton, Virginia. At Chapter 4, "Capitalization," they state in 4.1 "Introduction:"

"First we should define terms used when discussing capitalization:

. All caps means that every letter in an expression is capital, LIKE THIS.



. Caps & 1c means that the principal words of an expression are capitalized, Like This.

. Caps and small caps refer to a particular font of type containing small capital letters instead of lowercase letters.

Elements in a document such as headings, titles, and captions may be capitalized in either sentence style or headline style:

. Sentence style calls for capitalization of the first letter, and proper nouns of course.

. Headline style calls for capitalization of all principal words (also called caps & 1c).

Modern publishers tend toward a down style of capitalization, that is, toward use of fewer capitals, rather than an up style."

Here we see that in headlines, titles, captions, and in sentences, there is no authorized usage of all caps. At 4.4.1. "Capitalization With Acronyms," we find the first authoritative use for all caps:

"Acronyms are always formed with capital letters.'

"Acronyms are often coined for a particular program or study and therefore require definition.'

"The letters of the acronym are not capitalized in the definition unless the acronym stands for a proper name:'

"Wrong - The best electronic publishing systems combine What You See Is What You Get (WYSIWYG) features...'

"Correct - The best electronic publishing systems combine what you see is what you get (WYSIWYG) features...'

"But Langley is involved with the National Aero-Space Plane (NASP) Program."

This cites, by example, that using all caps is allowable in an acronym. "Acronyms" are words formed from the initial letters of successive parts of a term. They never contain periods and are often not standard, so that definition is required. Could this apply to lawful proper Christian

names? If that were true, then JOHN SMITH would have to follow a definition of some sort, which it does not. For example, only if JOHN SMITH were defined as 'John Orley Holistic Nutrition of the Smith Medical Institute To Holistics (JOHN SMITH)' would this apply.

The most significant section appears at 4.5, "Administrative Names":

"Official designations of political divisions and of other organized bodies are capitalized:

Names of political divisions;

Canada, New York State; United States Northwest Territories; Virgin Islands, Ontario Province;

Names of governmental units, US Government Executive Department, US Congress, US Army; US Navy."

According to this official US Government publication, the States are never to be spelled in all caps such as "NEW YORK STATE." The proper English grammar - and legal - style is "New York State." This agrees, once again, with Texas Law.

### **Review's Manual on Usage & Style.**

The Use of a Legal Fiction

### **The Real Life Dictionary of the Law**

The authors of "The Real Life Dictionary of the Law," Gerald and Kathleen Hill, are accomplished scholars and writers. Gerald Hill is an experienced attorney, judge, and law instructor. Here is how the term legal fiction is described:

"Legal fiction."

"n. A presumption of fact assumed by a court for convenience, consistency or to achieve justice.'

"There is an old adage: Fictions arise from the law, and not law from fictions."

Oran's Dictionary of the Law

From Oran's "Dictionary of the Law," published by the West Group 1999, within the definition of "Fiction" is found:

"A legal fiction is an assumption that something that is (or may be) false or nonexistent is true or real.'

"Legal fictions are assumed or invented to help do justice.'

"For example, bringing a lawsuit to throw a nonexistent 'John Doe' off your property used to be the only way to establish a clear right to the property when legal title was uncertain."

"Merriam-Webster's Dictionary of Law" 1996 states:

"legal fiction:"

"something assumed in law to be fact irrespective of the truth or accuracy of that assumption.'

"Example:'

"... the legal fiction that a day has no fraction Fields vs. Fairbanks North Star Borough, 818 P.2d658 (1991)."

This is the reason behind the use of all caps when writing a proper name. The US and State Governments are deliberately using a legal fiction to "address" the lawful, real, flesh-and-blood man or woman. We say this is deliberate because their own official publications state that proper names are not to be written in all caps. They are deliberately not following their own recognized authorities.

In the same respect, by identifying their own government entity in all caps, they are legally stating that it is also intended to be a legal fiction. As stated by Dr. Mary Newton Bruder in the beginning of this memorandum, the use of all caps for writing a proper name is an "internal style" for what is apparently a pre-determined usage and, at this point, unknown jurisdiction.

The main key to a legal fiction is assumption as noted in each definition above.

Conclusion: There are no official or unofficial English grammar style manuals or reference publications that recognize the use of all caps when writing a proper name. To do so is by fiat, within and out of an undisclosed jurisdiction by unknown people for unrevealed reasons, by juristic license of arbitrary presumption not based on fact. The authors of the process unilaterally create legal fictions for their own reasons and set about to get us to take the bait, fall for the deceit.

### **Assumption of a Legal Fiction**

An important issue concerning this entire matter is whether or not a proper name, perverted into an all caps assemblage of letters, can be substituted for a lawful Christian name or any proper name, such as the State of Florida. Is the assertion of all-capital-letter names "legal?" If so, from where does this practice originate and what enforces it?

A legal fiction may be employed when the name of a "person" is not known, and therefore using the fictitious name "John Doe" as a tentative, or interim artifice to surmount the absence of true knowledge until the true name is known. Upon discovering the identity of the fictitious name, the true name replaces it.

In all cases, a legal fiction is an assumption of purported fact without having shown the fact to be true or valid. It is an acceptance with no proof. Simply, to assume is to pretend. Oran's "Dictionary of the Law" says that the word "assume" means:

1. To take up or take responsibility for; to receive; to undertake. See "assumption."
2. To pretend.
3. To accept without proof.

These same basic definitions are used by nearly all of the modern law dictionaries. It should be noted that there is a difference between the meanings of the second and third definitions with that of the first. Pretending and accepting without proof are of the same understanding and meaning. However, to take responsibility for and receive, or assumption, does not have the same meaning. Oran's defines "assumption" as:

"Formally transforming someone else's debt into your own debt.'

"Compare with guaranty.'

"The assumption of a mortgage usually involves taking over the seller's 'mortgage debt' when buying a property (often a house)."

Now, what happens if all the meanings for the word "assume" are combined? In a literal and definitive sense, the meanings of assume would be: The pretended acceptance, without proof, that someone has taken responsibility for, has guaranteed, or has received a debt.

Therefore, if we apply all this in defining a legal fiction, the use of a legal fiction is an assumption or pretension that the legal fiction named has received and is responsible for a debt of some sort. Use of the legal fiction "JOHN P JONES" in place of the proper name "John Paul Jones" implies an assumed debt guarantee without any offer of proof. The danger behind this is that if such an unproven assumption is made, unless the assumption is proven wrong it is considered valid.

An assumed debt is valid unless proven otherwise. ("An unrebutted affidavit, claim, or charge stands as the truth in commerce.") This is in accord with the Uniform Commercial Code, valid in every State and made a part of the Statutes of each State. A name written in all caps - resembling a proper name but grammatically not a proper name - is being held as a debtor for an assumed debt. Did the parties to the Complaint incur that debt? If so, how and when?

Where is the contract of indebtedness that was signed and the proof of default thereon? What happens if the proper name, i.e. "John Paul Jones," answers for or assumes the fabricated name, i.e. "JOHN P JONES?" The two become one and the same. This is the crux for the use of the all caps names by the US Government and the States. It is the way that they can bring someone into the "de facto" venue and jurisdiction that they have created. By implication of definition, this also is for the purpose of some manner of assumed debt.

Why won't they use "The State of Texas" or "John Doe" in their courts or on Driver's Licenses? What stops them from doing this? Obviously, there is a reason for using the all-caps names since

they are very capable of writing proper names just as their own official style manual states. The reason behind "legal fictions" is found within the definitions as cited above.

### **The Legalities of All-Capital-Letters Names**

We could go on for hundreds of pages citing the legal basis behind the creation and use of all-capital-letters names. In a nutshell, fabricated legal persons such as "STATE OF TEXAS" can be used to fabricate additional legal persons. "Fictions" arise from the law, not the law from fictions. Bastard legal persons originate from any judicial/governmental actor that wishes to create them, regardless of whether he/she/it is empowered by law to do so. However, a law can never originate from a fictional foundation that doesn't exist.

The generic and original US Constitution was validated by treaty between individual nation states (all of which are artificial, corporate entities since they exist in abstract idea and construct). Contained within it is the required due process of law for all the participating nation states of that treaty. Representatives of the people in each nation state agreed upon and signed it. The federal government is not only created by it, but is also bound to operate within the guidelines of Constitutional due process. Any purported law that does not originate from Constitutional due process is a fictional law without validity. Thus, the true test of any American law is its basis of due process according to the organic US Constitution. Was it created according to the lawful process or created outside of lawful process?

### **Executive Orders and Directives**

For years many have researched the lawful basis for creating all-caps juristic persons and have concluded that there is no such foundation according to valid laws and due process. But what about those purported "laws" that are not valid and have not originated from constitutional due process? There's a very simple answer to the creation of such purported laws that are really not laws at all: "Executive Orders" and "Directives." They are "color of law" without being valid laws of due process. These "Executive Orders" and "Directives" have the appearance of law and look as if they are laws, but according to due process, they are not laws. Rather, they are "laws" based on fictional beginnings and are the inherently defective basis for additional fictional "laws" and other legal fictions. They are "regulated" and "promulgated" by Administrative Code, rules

and procedures, not due process. Currently, Executive Orders are enforced through the charade known as the Federal Administrative Procedures Act. Each State has also adopted the same fatally flawed administrative "laws."

### **Lincoln Establishes Executive Orders**

Eighty-five years after the Independence of the United States, seven southern nation States of America walked out of the Second Session of the thirty-sixth Congress on March 27, 1861. In so doing, the Constitutional due process quorum necessary for Congress to vote was lost and Congress was adjourned sine die, or "without day." This meant that there was no lawful quorum to set a specific day and time to reconvene which, according to Robert's Rules of Order, dissolved Congress. This dissolution automatically took place because there are no provisions within the Constitution allowing the passage of any Congressional vote without a quorum of the States.

Lincoln's second Executive Order of April 1861 called Congress back into session days later, but not under the lawful authority, or lawful due process, of the Constitution. Solely in his capacity as Commander-in-Chief of the US Military, Lincoln called Congress into session under authority of Martial Law. Since April of 1861, "Congress" has not met based on lawful due process. The current "Congress" is a legal fiction based on nothing more meritorious than "Yeah, so what are you going to do about it?" Having a monopoly on the currency, "law," and what passes for "government," and most of the world's firepower, the motto of the Powers That Be is: "We've got what it takes to take what you've got."

Legal-fiction "laws," such as the Reconstruction Acts and the implementation of the Lieber Code, were instituted by Lincoln soon thereafter and became the basis for the current "laws" in the US. Every purported "Act" in effect today is "de facto," based on colorable fictitious entities created arbitrarily, out of nothing, without verification, lawful foundation, or lawful due process. All of such "laws" are not law, but rules of ruler ship by force/conquest, originating from and existing in military, martial law jurisdiction. Military, martial law jurisdiction, jurisdiction of war...win/lose interactions consisting of eating or being eaten, living or dying...food chain...law of necessity...suspension of all law other than complete freedom to act in any manner to eat, kill,

or destroy or avoid being eaten, killed, or destroyed...no law...lawlessness.. complete absence of all lawful basis to create any valid law.

Contractually, being a victim of those acting on the alleged authority granted by the law of necessity, no lawful object, valuable consideration, free consent of all involved parties, absence of fraud, duress, malice, and undue influence, no bona fide, enforceable contract, no valid, enforceable nexus, absolute right to engage in any action of any kind in self-defense, complete and total right to disregard any alleged jurisdiction and demands from self-admitted outlaws committing naked criminal aggression without any credibility and right to demand allegiance and compliance from anyone.

Every President of the United States since Lincoln has functioned by Executive Orders issued from a military, martial law jurisdiction with the only "law" being the "law of necessity," i.e. the War Powers. The War Powers are nothing new. indeed, they have been operational from the instant the first man thought he would "hide from God," try to cheat ethical and natural law by over reaching, invade the space and territory of others, covet other people's land or property, steal the fruits of their labors, and attempt to succeed in life by win/lose games. All existing "authority" in the United States today derives exclusively from the War Powers. Truman's reaffirmation of operational authority under the War Powers begins: "NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended (section 5(b) of Appendix to Title 50), and section 4 of the act of March 9, 1933, 48 Stat. 2. ..." Sic transit rights, substance, truth, justice, peace, and freedom in America, "the land of the free and the home of the brave."

### **The Abolition of the English & American Common Law**

Here's an interesting quote from the 1973 session of the US Supreme Court:

**"The American law.'**

"In this country, the law in effect in all but a few States until mid-19th century was the pre-existing English common law...'



"It was not until after the War Between the States that legislation began generally to replace the common law." *Roe vs. Wade*, 410 US 113.

In effect, Lincoln's second Executive Order abolished the recognized English common law in America and replaced it with "laws" based on a fictional legal foundation, i.e., Executive Orders and Directives executed under "authority" of the War Powers. Most States still have a reference to the common laws within their present day statutes. For example, in the Florida Statutes (1999), Title I. Chapter 2, at § 2.01 "Common law and certain statutes declared in force," it states:

"The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state. History. -- s. 1, Nov. 6, 1829; RS 59; GS 59; RGS 71; CGL 87."

Note that the basis of the common law is an approved Act of the people of Florida by Resolution on November 6, 1829, prior to Lincoln's Civil War. Also note that the subsequent "laws," as a result of Acts of the Florida Legislature and the United States, now take priority over the common law in Florida. In April 1861, the American and English common law was abolished and replaced with legal fiction "laws," a.k.a. Statutes, Rules, and Codes based on Executive Order and not the due process specified within the organic Constitution. Existing and functioning under the law of necessity *ab initio*, they are all non-law and cannot validly assert jurisdiction, authority, or demand for compliance from anyone. They are entirely "rules of ruler ship," i.e. organized piracy, privilege, plunder, and enslavement, invented and enforced by those who would rule over others by legalized violence in the complete absence of moral authority, adequate knowledge, and natural-law mechanics to accomplish any results other than disruption, conflict, damage, and devastation. The established maxim of law applies:

*"Extra territorium just dicenti non paretur impune."*

"One who exercises jurisdiction out of his territory cannot be obeyed with impunity." 10 Co. 77; Dig. 2. 1. 20; Story, *Confl. Laws* § 539; Broom, *Max.* 100, 101.

Applying it all to Current "laws"

An established maxim of law states the importance of the name:

*"Ad recte docendum oportet, primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet."*

"In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names." Co. Litt. 68.

Title III, "Pleadings and Motions," Rule 9(a) "Capacity," Federal/STATE Rules of Civil Procedure, states, in pertinent part:

"When an issue is raised as to the legal existence of a named party, or the party's capacity to be sued, or the authority of a party to be sued, the party desiring to raise the issue shall do so by specific negative averment, which shall include supporting particulars." Rule 9(a), Federal/STATE Rules of Civil Procedure; Title 28 U.S.C. Appendix (unstatutory; See statutory Title 1 U.S.C. § 204 (Notes) ).

At this juncture, it is clear that the existence of a name written with all caps is a necessity-created legal fiction. This is surely an issue to be raised and the supporting particulars are outlined within this memorandum. Use of the proper name must be insisted upon as a matter of abatement – correction - for all parties of an action of purported "law." However, the current "courts" cannot correct this since they are all based on presumed/assumed fictional law and must use artificial, juristic names. Instead, they expect the lawful Christian man or woman to accept the all-caps name and agree by silence to be treated as if he or she were a fictional entity invented and governed by mortal enemies. They must go to unlimited lengths to deceive and coerce this compliance or the underlying criminal farce would be exposed and a world-wide plunder/enslavement racket that has held all of life on this planet in a vice grip for millennia would crumble and liberate every living thing. At this point the would-be rulers of the world would be required to succeed in life by honest, productive labors the way those upon whom they parasitically feed are forced to conduct their lives.

## **Oklahoma Statutes**

Since the entire game functions on the basis of people's failure to properly rebut a rebuttable presumption, the issue then becomes how to properly rebut their presumption that you are knowingly, intentionally, and voluntarily agreeing to be treated as if you were the all-caps name. One angle of approach is found in the requirement for proper names to be identified in any legal dispute. This includes a mandate to correct the legal paperwork involved when proper names are provided. In regard to criminal prosecution this is clearly set forth in the Oklahoma Statutes, Chapter 22, § 403:

"When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information."

### **"Legal" Definition**

In fact, it would appear that the Oklahoma Statutes are saying that the use of a "fictitious name" in either an indictment or information (prosecutorial) that such use is forgivable upon after the fact correction. Unfortunately, that is not the case when held to "legal" definition.

"Fictitious name."

"A counterfeit, alias, feigned, or pretended name taken by a person, differing in some essential particular from his true name (consisting of Christian name and patronymic [surname]), with the implication that it is meant to deceive or mislead." Black's Law Dictionary, 6th ed. Pg. 624.

The use of, by implication, mistake, or otherwise, of fictitious names within any lawful and even "legal" document renders said document/instrument fatally flawed for simple fraud. And, since no Private Citizen can be held accountable for the same crime twice, by guarantee, then if initially one is charged in the wrong name, and that mistaken identity at any stage of the proceeding renders the present proceeding null, void, and dismissed. This renders the above "statute" also null, void, and never written, for this fatal error cannot be corrected and one must, secondly, face the same charges. Mistaken Identity cannot be used as a correctable error merely because one cannot be charged twice for the same cause, even if the first charged was mistaken.

But that is not the limit of "legal" definition of "fictitious" use of names. It is much more serious to use a fictitious name as a "plaintiff":

"Fictitious plaintiff."

"A person appearing in the writ, complaint, or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it.'

"It is a contempt of court to sue in the name of a fictitious party."

Black's Law Dictionary, 6th ed. Pg. 624.

Obviously, any action in which both and/or all parties are fictitious is a "fictitious action" and it is "legally" defined as such:

"Fictitious action."

"An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties."

Black's Law Dictionary, 6th ed. Pg. 624.

These three "legal" definitions have now led us to one final definition that defines any and all such "fictitious actions":

"Fictitious."

"Founded on a fiction; having the character of a fiction; pretended; counterfeit.'

"Feigned, imaginary, not real, false, not genuine, nonexistent.'

"Arbitrarily invented and set up, to accomplish an ulterior object."

Black's Law Dictionary, 6th ed. Pg. 624.

It does not take a Rocket Scientist to figure out many of these "ulterior objects"; constitutional abrogation, tyranny, despotism, false personation, embezzlement of the Public Money, banking

fraud, commercial fraud, identity theft, neglect of office, malfeasance, misfeasance, and nonfeasance of office, piracy, privateering, kidnapping, false imprisonment, ransoming, constitutional malpractice, maritime fraud, military fraud, trademark infringement/counterfeiting, anti-Christian acts, securities fraud, communism, fascism, Alien Enemy Program, etc. The list is almost endless.

It appears, thus far, that "legal" definition of these fictitious/legal fiction/imaginary/etc. assumptive/presumptive has far and away been the most damaging references used to the cause and case of the tyrants and despots that are so prevalent.

### **American Jurisprudence**

In general, it is essential to identify parties to court actions properly. If the alleged parties to an action are not precisely identified, then who is involved with whom or what, and how? If not properly identified, all corresponding judgments are void, as outlined in Volume 46, American Jurisprudence 2d, at "Judgments:"

"§ 100 Parties - A judgment should identify the parties for and against whom it is rendered, with such certainty that it may be readily enforced, and a judgment which does not do so may be regarded as void for uncertainty. Such identification may be achieved by naming the persons for and against whom the judgment is rendered. Technical deficiencies in the naming of the persons for and against whom judgment is rendered can be corrected if the parties are not prejudiced. A reference in a judgment to a party plainly liable, followed by an omission of that party's name from the language of the decree, at least gives rise to an ambiguity and calling for an inquiry into the court's real intention as reflected in the entire record and surrounding circumstances." [Footnote numbers and cites are omitted.]

### **The present situation in America**

A legal person = a legal fiction

One of the terms used predominantly by the present civil governments and courts in America is "legal person." Just what is a legal person? Some definitions are:

[A] legal person: a body of persons or an entity (as a corporation) considered as having many of the rights and responsibilities of a natural person and especially the capacity to sue and be sued. Merriam-Webster's Dictionary of Law (1996).

Person. I. A human being (a "natural" person). 2. A corporation (an "artificial" person). Corporations are treated as persons in many legal situations. Also, the word "person" includes corporations in most definitions in this dictionary. 3. Any other "being" entitled to sue as a legal entity (a government, an association, a group of Trustees, etc.). 4. The plural of person is persons, not people (see that word). - Oran's "Dictionary of the Law," West Group (1999).

Person. An entity with legal rights and existence including the ability to sue and be sued, to sign contracts, to receive gifts, to appear in court either by themselves or by lawyer and, generally, other powers incidental to the full expression of the entity in law. Individuals are "persons" in law unless they are minors or under some kind of other incapacity such as a court finding of mental incapacity. Many laws give certain powers to "persons" which, in almost all instances, includes business organizations that have been formally registered such as partnerships, corporations or associations. -- Duhaime's Law Dictionary.

PERSON, noun. per'sn. [Latin persona; said to be compounded of per, through or by, and sonus, sound; a Latin word signifying primarily a mask used by actors on the stage.] 8. In law, an artificial person, is a corporation or body politic. -Blackstone. -- Webster's 1828 Dictionary.

"...a Sovereign is not a "person" -- United Mine Workers vs. United States, 330 U.S. 258.

A name is word or words used to distinguish and identify a person. -- Name, 65 C.J.S. § 1, pg. 1.

Person. It may include [limited to] artificial beings, as corporations ...territorial corporations ... foreign corporations ... relating to taxation and revenue laws ... XIV Amendment "persons" ... A county ... a slave ... estate of a decedent ... a judge holding court ... an infant [Ward of the Court] ... officers, partnerships, and women ... participants in the forbidden acts ["defendants" & "plaintiffs"] ... agents, officers, and members of the board of directors or trustees, or their controlling bodies, of corporations ... the legal subject [subject-matter] or substance [rem; res] " - - Bouvier's Law Dictionary, 8th ed., pg. 2574.

A corporation incorporated under de jure law, i.e. by bona fide express contract between real beings capable of contracting, is a legal fact. Using the juristic artifice of "presumption," or "assumption" (a device known as a "legal fiction"), implied contract, constructive trusts, another entirely separate entity can be created using the name of the bona fide corporate legal fact (the name of the corporation) by altering the name of the corporation into some other corrupted format, such as ALL-CAPITAL LETTERS or abbreviated words in the name. The corporation exists in law, but has arbitrarily been assigned another NAME. No such corporation (legal fact), nor any valid law, nor even a valid legal fiction, can be created under the "law of necessity," i.e. under "no law." Likewise, the arbitrary use of the legal-fiction artifice of "right of presumption" (over unwary, uninformed, and usually blindly trusting people) can be legitimately exercised under "no law." Anything whatsoever done under alleged authority of naked criminal aggression, i.e. law of necessity, can be rendered legitimate. Maxims of law describing "necessity" include:

"Necessity has no law." Plowd. 18, and 15 Vin. Abr. 534; 22 id. 540.

. "In time of war, laws are silent." Cicero.

Non-existent law, the legal condition that universally prevails in the official systems of the world today, means that no lawful basis exists upon which anything can be created, or be made to transpire, upon which basis allegiance and obedience can be legitimately demanded. Acting under the law of necessity, i.e. lawlessness, allows complete and total right of everyone to disregard any and all alleged assertions of any lawful, verifiable, and legitimate jurisdiction over anything or anyone. Anyone acting against anyone under such non-law is self-confessing to be a naked criminal aggressor, and con man who has forfeited all credibility and right to demand allegiance, obedience, or compliance with any jurisdiction he might assert. If you, as a real being, are in real law and it is impossible for an attorney or judge to recognize or access it, you are not (and cannot be made subject to by them) in their jurisdiction. The crucial issue is then how to notice them of your position and standing.

A person created under de jure law, with the person's identifying name appearing as prescribed by law and according to the rules of English grammar, is a legal fact. A corrupted "alter ego" version of that name, manufactured under the legal fiction of "right of presumption" will have

"credibility" only so long as the presumption remains unchallenged. The rule of the world is that anything and everything skates unless you bust it.

### **Legal or Lawful?**

It is crucial to define the difference between "legal" and "lawful." The generic Constitution references genuine law. The present civil authorities and their courts use the word "legal." Is there a difference in the meanings? The following is quoted from A Dictionary of Law (1893):

Lawful. In accordance with the law of the land; according to the law; permitted, sanctioned, or justified by law. "Lawful" properly implies a thing conformable to or enjoined by law; "Legal," a thing in the form or after the manner of law or binding by law. A writ or warrant issuing from any court, under color of law, is a "legal" process however defective. See "legal."

Legal. Latin legalis. Pertaining to the understanding, the exposition, the administration, the science and the practice of law: as, the legal profession, legal advice; legal blanks, newspaper. Implied or imputed in law. Opposed to actual "Legal" looks more to the letter [form/appearance], and "Lawful" to the spirit [substance/content], of the law. "Legal" is more appropriate for conformity to positive rules of law; "Lawful" for accord with ethical principle. "Legal" imports rather that the forms [appearances] of law are observed, that the proceeding is correct in method, that rules prescribed have been obeyed; "Lawful" that the right is act full in substance, that moral quality is secured. "Legal" is the antithesis of equitable, and the equivalent of constructive. 2 Abbott's Law Dictionary 24.

Legal matters administrate, conform to, and follow rules. They are equitable in nature and are implied (presumed) rather than actual (express). A legal process can be defective in law. This accords with the previous discussions of legal fictions and color of law. To be legal, a matter does not have to follow the law. Instead, it conforms to and follows the rules or form of law. This is why the Federal and State Rules of Civil and Criminal Procedure are cited in every court Petition so as to conform to legal requirements of the specific juristic persons named, e.g., "STATE OF GEORGIA" or the "U.S. FEDERAL GOVERNMENT" that rule the courts.



Lawful matters are ethically enjoined in the law of the land - the law of the people - and are actual in nature, not implied. This is why whatever true law was upheld by the organic Constitution has no bearing or authority in the present day legal courts. It is impossible for anyone in "authority" today to access, or even take cognizance of, true law since "authority" is the "law of necessity," 12 USC 95.

Therefore, it would appear that the meaning of the word "legal" is "color of law," a term which Black's Law Dictionary, Fifth Edition, defines as:

**Color of law.**

"The appearance or semblance, without the substance, of legal right.'

"Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of law." Black's Law Dictionary, 5th ed., Pg. 241.

**Executive Orders rule the land**

The current situation is that legalism has usurped and engulfed the law. The administration of legal rules, codes, and statutes now prevails instead of actual law. This takes place on a Federal as well as State level. Government administrates what it has created through its own purported "laws," which are not lawful, but merely "legal." They are arbitrary constructs existing only because of the actions of people acting on fictitious (self-created) authority, i.e. no authority; they are authorized and enforced by legal Executive Orders. Executive Orders are not lawful and never have been. As you read the following, be aware of the words "code" and "administration."

Looking at the United States Census 2000 reveals that the legal authority for this census comes from "Office of Management and Budget" (OMB) Approval No.0607-0856. The OMB is a part of the Executive Office of the President of the United States. The U.S. Census Bureau is responsible for implementing the national census, which is a division of the "Economics and Statistics Administration" of the U.S. Department of Commerce (USDOC). The USDOC is a department of the Executive Branch. Obviously, Census 2000 is authorized, carried out, controlled, enforced and implemented by the President – the Executive Branch of the Federal

Government - functioning as it has been since 1861, in the lawless realm of necessity (which is now even more degenerate than when it commenced under Lincoln).

In fact, the Executive Office of the President controls the entire nation through various departments and agencies effecting justice, communications, health, energy, transportation, education, defense, treasury, labor, agriculture, mails, and much more, through a myriad of Executive Orders, Proclamations, Policies, and Decisions.

Every US President since Lincoln has claimed his 'authority' for these Executive Orders on Article II, Section 2 of the Constitution for the United States of America (1764 to Date):

"The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; ... He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

In reality, the Congress is completely by-passed. Since the Senate was convened in April, 1861 by Presidential Executive Order No. 2, (not by lawful constitutional due process), there is no United States Congress. The current "Senate" and "House" are, like everything, "colorable" ("color of Senate") under the direct authority of the Executive Office of the President. The President legally needs neither the consent nor a vote from the Senate simply because the Senate's legal authority to meet exists only by Executive Order. Ambassadors, public ministers, consuls, Federal judges, and all officers of the UNITED STATES are appointed by, and under authority of, the Executive Office of the President.

### **The Federal Registry is an Executive function**

The first official act of every incoming President is to re-affirm the War Powers. He must do so, or he is devoid of power to function in office. The War Powers are set forth in the Trading With

The Enemy Act of October 6, 1917, and the Amendatory Act of March 9, 1933 (The Banking Relief Act). In the Amendatory Act, every citizen of the United States was made an enemy of the Government, i.e. the Federal Reserve/IMF, et al, Creditors in bankruptcy who have conquered the country by their great paper-money banking swindle.

For the past 65 years, every Presidential Executive Order has become purported "law" simply by its publication in the Federal Register, which is operated by the Office of the Federal Register (OFR). In 1935, the OFR was established by the Federal Register Act. The purported authority for the OFR is found within the United States Code, Title 44, at Chapter 15: "§ 1506. Administrative Committee of the Federal Register; establishment and composition; powers and duties

The Administrative Committee of the Federal Register shall consist of the Archivist of the United States or Acting Archivist, who shall be chairman, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer. The Director of the Federal Register shall act as secretary of the committee. The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter."

Notice that the entire Administrative Committee of the Federal Register is comprised of officers of the Federal Government. Who appoints all Federal officers? The President does. This "act" also gives the President the authority to decree all the regulations to carry out the act. By this monopoly the Executive establishes, controls, regulates, and enforces the Federal Government without need for any approval from the Senate or anyone else (other than his undisclosed superiors). He operates without any accountability to the people at all. How can this be considered lawful?

In 1917, President Woodrow Wilson couldn't persuade Congress to agree with his desire to arm United States vessels traversing hostile German waters before the United States entered World War I, so Wilson simply invoked the "policy" through a Presidential Executive Order. President Franklin D. Roosevelt issued Executive Order No. 9066 in December 1941 forcing 100,000 Americans of Japanese descent to be rounded up and placed in concentration camps while all their property was confiscated. Is it any wonder that the Congress, which the President "legally" controls, did not impeach President William Jefferson Clinton when the evidence for

impeachment was overwhelming? On that note, why is it that Attorney-Presidents have used Executive Orders the most? Who, but an attorney, would know and understand legal rules the best. Sadly, they enforce what's "legal" and ignore what's lawful. In fact, they have no access to what is lawful since the entirety of their "authority," which is ethically and existentially specious, derives from the War Powers.

### **How debt is assumed by legal fictions**

We now refer back to the matter of assumption, as already discussed, with its relationship to arbitrarily created juristic persons, e.g. "STATE OF CALIFORNIA" or "JOHN P JONES." Since an assumption, by definition, implies debt, what debt does a legal fiction assume? Now that we have explored the legal - executive - basis of the current Federal and State governments, it's time to put all this together.

The government use of all caps in place of proper names is absolutely no mistake. It signifies an internal ("legal") rule and authority. Its foundation is pure artifice and the results have compounded into more deceit in the form of created, promulgated, instituted, administered, and enforced rules, codes, statutes, and policy - i.e. "the laws that appear to be but are not, never were, and never can be."

*Qui sentit commodum, sentire debet et onus.* He who enjoys the benefit, ought also to bear the burden. He who enjoys the advantage of a right takes the accompanying disadvantage - a privilege is subject to its condition or conditions. -- Bouvier's Maxims of Law (1856).

### **The Birth Certificate**

Since the early 1960's, State governments - themselves specially created, juristic, corporate persons signified by all caps - have issued Birth Certificates to "persons" with legal fiction all-caps names. This is not a lawful record of your physical birth, but rather the birth of the juristic, all-caps name. It may appear to be your true name, but since no proper name is ever written in all caps (either lawfully or grammatically) it does not identify who you are. The Birth Certificate is the government's self-created document of title for its new "property," i.e. the deed to the juristic-name artificial person whose all-caps name "mirrors" your true name. The Birth Certificate

brings the new all-caps name into colorable admiralty/maritime law, the same way a ship (and ship of state) is berthed.

One important area to address, before going any further, is the governmental use of older data storage from the late 1950's until the early 1980's. As a "left over" from various teletype-oriented systems, many government data storage methods used all caps for proper names. The IRS was supposedly still complaining about some of their antiquated storage systems as recent as the early 1980's. At first, this may have been a necessity of the technology at the time, not a deliberate act. Perhaps, when this technology was first being used and implemented into the mainstream of communications, some legal experts saw it as a perfect tool for their perfidious intentions. What better excuse could there be?

However, since local, State, and Federal offices primarily used typewriters during that same time period, and Birth Certificates and other important documents, such as driver's licenses, were produced with typewriters, it's very doubtful that this poses much of an excuse to explain all-caps usage for proper names. The only reasonable usage of the older databank all-caps storage systems would have been for addressing envelopes or certain forms in bulk, including payment checks, which the governments did frequently.

Automated computer systems, with daisy-wheel and pin printers used prevalently in the early 1980's, emulated the IBM electric typewriter Courier or Helvetica fonts in both upper and lower case letters. Shortly thereafter, the introduction of laser and ink-jet printers with multiple fonts became the standard. For the past fifteen years, there is no excuse that the government computers will not accommodate the use of lower case letters unless the older data is still stored in its original form, i.e. all caps, and has not been translated due to the costs of re-entry. But this does not excuse the entry of new data, only "legacy" data. In fact, on many government forms today, proper names are in all caps while other areas of the same computer produced document are in both upper and lower case. One can only conclude that now, more than ever, the use of all caps in substitution the writing a proper name is no mistake.

When a child is born, the hospital sends the original, not a copy, of the record of live birth to the "State Bureau of Vital Statistics," sometimes called the "Department of Health and Rehabilitative Services" (HRS). Each STATE is required to supply the UNITED STATES with birth, death,

and health statistics. The STATE agency that receives the original record of live birth keeps it and then issues a Birth Certificate in the corrupted, all-caps version of the baby's true name, i.e. JAMES WILBER SMITH.

cer-tif-i-cate, noun. Middle English certificat, from Middle French, from Medieval Latin ceruficatum. from Late Latin, neuter of certificatus, past participle of certificare, to certify, 15th century. 3: a document evidencing ownership or debt.--Merriam Webster Dictionary (1998).

The Birth Certificate issued by the State is then registered with the U.S. Department of Commerce -- the Executive Office -- specifically through their own sub-agency, the U.S. Census Bureau, which is responsible to register vital statistics from all the States. The word "registered," as it is used within commercial or legal based equity law, does not mean that the all-caps name was merely noted in a book for reference purposes. When a Birth Certificate is registered with the U.S. Department of Commerce, it means that the all-caps legal person named thereon has become a surety or guarantor, a condition and obligation that is automatically and unwittingly assumed unless you rebut the presumption by effectively noticing them: "It ain't me."

Registered. Security, bond. -- Merriam-Webster Dictionary of Law (1996).

Security. I a: Something (as a mortgage or collateral) that is provided to make certain the fulfillment of an obligation. Example: used his property as security for a loan. "surety." 2: Evidence of indebtedness, ownership, or the right to ownership.

Bond. I a: A usually formal written agreement by which a person undertakes to perform a certain act (as fulfill the obligations of a contract). ... with the condition that failure to perform or abstain will obligate the person ... to pay a sum of money or will result in the forfeiture of money put up by the person or surety. 1b: One who acts as a surety. 2: An interest-bearing document giving evidence of a debt issued by a government body or corporation that is sometimes secured by a lien on property and is often designed to take care of a particular financial need. -- Ibid.

Surety. The person who has pledged him or herself to pay back money or perform a certain action if the principal to a contract fails, as collateral, and as part of the original contract. -- Duhaime's Law Dictionary.

1: a formal engagement (as a pledge) given for the fulfillment of an undertaking.

2: one who promises to answer for the debt or default of another.

Under the Uniform Commercial Code, however, a surety includes a guarantor, and the two terms are generally interchangeable. Merriam Webster's "Dictionary of Law" (1996).

Guarantor. A person who pledges collateral for the contract of another, but separately, as part of an independently contract with the obligee of the original contract. Duhaime's Law Dictionary.

It is not difficult to see that a state-created Birth Certificate, with an all-caps, name is a document evidencing debt the moment it is issued. Once a state has registered a birth document with the U.S. Department of Commerce, the Department notifies the Treasury Department, which takes out a loan from the Federal Reserve. The Treasury uses the loan to purchase a bond (the Fed holds a "purchase money security interest" in the bond) from the Department of Commerce, which invests the sale proceeds in the stock or bond market. The Treasury Department then issues Treasury securities in the form of Treasury Bonds, Notes, and Bills using the bonds as surety for the new "securities." This cycle is based on the future tax revenues of the legal person whose name appears on the Birth Certificate. This also means that the bankrupt, corporate U.S. can guarantee to the purchasers of their securities the lifetime labor and tax revenues of every "citizen of the United States"/American with a Birth Certificate as collateral for payment. This device is initiated simply by converting the lawful, true name of the child into a legal, juristic name of a person.

*Dubuque rei potissinia pars prineipium est* **The principal part of everything is in the beginning. ("Well begun is half done.")**

Legally, you are considered to be a slave or indentured servant to the various Federal, State and local governments via a Department of Health owned, STATE-issued and STATE-created Birth Certificate in the name of your all-caps person. Birth Certificates are issued so that the issuer can claim "exclusive" title to the legal person created thereby. This is further compounded when one voluntarily obtains a Driver's License or a Social Security Account Number. The state even owns your personal and private life through your STATE-issued marriage license/certificate issued in the all-caps names. You have no rights in birth, marriage, or even death. The state holds title to

all legal persons the state creates via Birth Certificates until the rightful owner, i.e. you, reclaims/redeems it by becoming the holder in due course of the instrument.

The main problem is that the mother and father, and then the eighteen-year-old man or woman, voluntarily agreed to this contrived system of plunder and slavery by remaining silent - a legal default, latches, and failing to claim one's own Rights. The maxim of law becomes crucially operative: "He who fails to assert his rights has none."

The legal rules and codes enforce themselves. There is no court hearing to determine if those rules are correct. Government rules are self-regulating and self-supporting. Once set into motion, such "laws" automatically come into effect provided the legal process has been followed.

### **The various bankruptcies**

The juristic, legal person known as the UNITED STATES is bankrupt and withholds all lawful and constitutionally mandated silver or gold - gold coin or bullion - with which to back any currency. All private held and federally held gold coins and bullion in America was seized via Executive Order of April 5, 1933 and paid to the creditor, the private Federal Reserve Corporation under the terms of the bankruptcy.

Congress - still convening strictly under Executive Order authority - confirmed the bankruptcy through the Joint Resolution to Suspend the Gold Standard and Abrogate the Gold Clause, June 5, 1933, House Joint Resolution (HJR) 192, June 5, 1933, 73<sup>rd</sup> Congress, 1st Session, Public Law 73-10. This 1933 public law states, in part: "... every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy."

The corporate U.S. declared bankruptcy a second time, whereby the Secretary of Treasury was appointed "Receiver" for the bankrupt U.S. in Reorganization Plan No. 26, Title 5 USC 903, Public Law 94-564, "Legislative History," page 5967.

Since 1933, the only "assets" used by the UNITED STATES to "pay its debt" to the Fed have been the blood, sweat, and tears of every American unfortunate to be saddled with a Birth



Certificate and a Social Security Account Number (the U.S. Government must conceal this fact from the American people at all cost). Their future labor and tax revenues have been "legally" pledged via the new all-caps, juristic-person names appearing on the Birth Certificates, i.e. the securities used as collateral for loans of credit (thin-air belief) to pay daily operational costs, re-organization expenses in bankruptcy, insurance policy premiums required to float the bankrupt government, and interest on the ever-increasing, wholly fraudulent, debt.

### **All Caps Legal Person vs. The Lawful Being**

Just who or what is the all-caps person, i.e. "JOHN PAUL JONES," "JOHN P JONES," or some other all capital letter corruption thereof? It is the entity the government created to take the place of the real being, i.e. John Paul Jones. The lawful Christian name of birthright has been replaced with a legal corporate name of deceit and fraud. If the lawful Christian name answers as the legal person, the two are recognized as being one and the same. However, if the lawful being distinguishes himself/herself as a party other than the legal fiction, the two are separated.

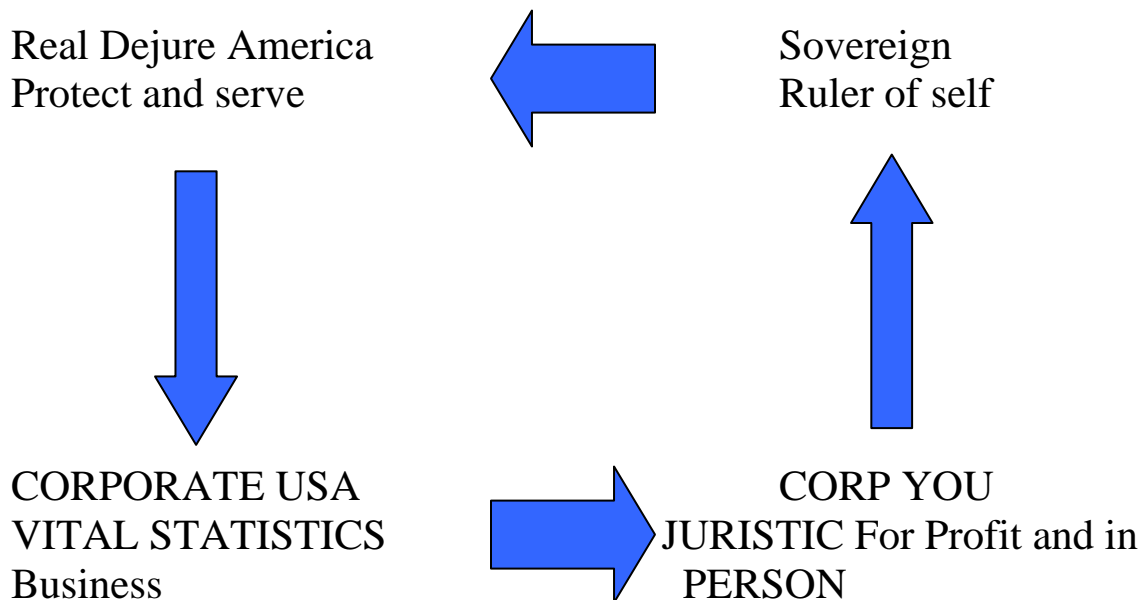
A result of the federal bankruptcy was the creation of the "UNITED STATES," which was made a part of the legal reorganization. The name of each STATE was also converted to its respective, all-caps and juristic, legal person, e.g. STATE OF DELAWARE. These new juristic, legal persons were then used to create more legal persons, such as corporations, with all-capital letters names, as well. Once this was accomplished, the greed quickly picked up speed. All areas of government and all alleged "courts of law," are de facto, "color of law and right" institutions. The "CIRCUIT COURT OF WAYNE COUNTY" and the "U.S. DISTRICT COURT" can recognize and deal only with other legal persons. This is why a lawful name is never entered in their records. The all-caps juristic, legal person is used instead.

Jurisdiction in such sham courts covers only other artificial persons. The proper jurisdiction for a lawful being is a Constitutionally sanctioned, common-law-venue court. Unfortunately, such jurisdiction was "shelved" in 1938 and is no longer available to most. Most all courts today are statutory commercial tribunals collecting tribute (plunder) from the alleged Creditors who think they have conquered the country on their way to ruling the world.

## The Organic vs. Corporate United States of America

1871 District of Columbia Organic Act  
The sub-franchises of Corporate America  
The 14th Amendment cizen  
The newly created Corporate YOU!!!  
How you have become the surety  
The corporations doing business together

How it works and is enforced



Now to bring this section home I would like for you to see this court case:

"Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, **a government can interface only with other artificial persons**. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that **no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them.**" S.C.R. 1795, Penhallow v. Doane's Administraters (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54)

## *II. Definitions and cases with their proper usage*

Now for some key definitions used in commercial law. For those of you who believe that a person is you and not a corporation or that the USA is not a corporation. Now to point out the thoughts and understanding from the American Bar Association. In their book entitled "The New Article 9" Uniform Commercial Code Second Edition ©2000. In the Preface to the First Edition page # vii. the first sentence reads "I never thought that I would read a statute that reports, "The United States is located in the District of Columbia" With this in mind please read on.

Person: Term may include artificial beings, as, corporations; It may include partnerships. "Persons are two kinds, natural and artificial."

**"a Sovereign is not a "person" -- United Mine Workers vs. United States, 330 U.S. 258.**

Person. It may include [limited to] artificial beings, as corporations ...territorial corporations ... foreign corporations ... relating to taxation and revenue laws ... XIV Amendment "persons" ... A county ... a slave ... estate of a decedent ... a judge holding court ... an infant [Ward of the Court] ... officers, partnerships, and women ...participants in the forbidden acts ["defendants" & "plaintiffs"] ... agents, officers, and members of the board of directors or trustees, or their controlling bodies, of corporations ... the legal subject [subject-matter] or substance [rem; res] ..." -- Bouvier's Law Dictionary, 8th ed., pg. 2574.

5 USC 552(a)(2) for term "individual"(2)

the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

5 USC 552a(a)(13) for definition of "federal personnel".

the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

Now lets look at "people" from Bouvier's Dictionary.

"PEOPLE. A state; as, the people of the state of New York; **a nation in its collective and political capacity.** 4 T. R. 783. See 6 Pet. S. C. Rep. 467."

Juristic: Pertaining to or belonging to, or characteristic of;

Surety: One who undertakes to pay. Being bound for another.

Straw man, as defined in Black's Law Dictionary, 6th Edition: A "front"; a third party who is put up in name only to take part in a transaction. Nominal party to a transaction; one who acts as an agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser or to accomplish some purpose otherwise not allowed. [Emphasis added]

Now for the UCC code itself. You first must know some definitions. Understanding what the words FACTUALLY mean is the whole key to the Code.

### **Article 9-102**

(bb) "Debtor" means 1 of the following:

- (i) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor. (Sounds like the owner to me)
- (ii) A seller of accounts, chattel paper, payment intangibles, or promissory notes.
- (iii) A consignee.

(sss) "Secured party" means 1 or more of the following:

- (i) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.
- (ii) A person that holds an agricultural lien.
- (iii) A consignor.
- (iv) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.
- (v) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.
- (vi) A person that holds a security interest arising under section 2401, 2505, 2711(3), 2A508(5), 4210, or 5118.

(uu) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include investment property, letters of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(73 to comply with a statute or regulation described in subsection (b) has only ) "Security agreement" means an agreement that creates or provides for a security interest.

In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure the effect the statute or regulation specifies.

(76) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

### **Article 3-104**

(7) "Draft" means a draft as defined in Section 3-104 or an item, other than an instrument, that is an order.

### **Article 8-102**

(a) “Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(c) “Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(g) “Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement under section 8501(2)(b) or (c), that person is the entitlement holder.

(n) “Securities intermediary” means either of the following:

(i) A clearing corporation.

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) “Security”, except as otherwise provided in section 8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer and is all of the following:

### **Article 1-201**

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 1-103). (Compare “Contract”.)

(11) “Contract” means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare “Agreement”.)

(16) “Fault” means wrongful act, omission, or breach.

(18) “Genuine” means free of forgery or counterfeiting.

(19) “Good faith” means honesty in fact in the conduct or transaction concerned. (see 1-103 in contract above)

(39) “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing, including a carbon copy of his or her signature.

(40) “Surety” includes guarantor.

### **Article 8-103**

(4) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

### **Article 3-105**

“Issue” and “issuer” defined; effect of unissued or conditionally issued instrument.

(1) “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

### **Article 3-103**

(5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.  
(Is this you or the bank? If you are not there signing who orders anything?)

(7) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.  
(Is this you or the bank? Who REALLY issued the instrument?)

4-104 (8) "**Drawee**" means a person ordered in a draft to make payment. (Bank?)

Keep these definitions close by. They may come in pretty handy and will definitely let most know you are not the average mind.

### **Tertius interveniens.**

Lat. In the civil law, a third person intervening; a third person who comes in between the parties to a suit; one who interpleads.

### **Real party in interest.**

Person who will be entitled to benefits of action if successful, that is, the one who is actually and substantially interested in subject matter as distinguished from one who has only a nominal, formal, or technical interest in or connection with it. Maryland Cas. Co. v. King, Okl., 381 P.2d

153, 156. Under the traditional test, a party is a "real party in interest" if it has the legal right under the applicable substantive law to enforce the claim in question. White Hall Bldg. Corp. v. Profexray Division of Litton Industries, Inc., D.C.Pa., 387 F.Supp. 1202, 1204. Real party in interest within rule that every civil action in federal courts must be prosecuted in name of real party in interest is the one, who, under applicable substantive law, has legal right to bring suit, Boeing Airplane Co. v. Perry, C.A.Kan., 322 F.2d 589, 591; and not necessarily person who will ultimately benefit from the recovery. First Nat. Bank of Chicago v. Mottola, D.C.Ill., 302 F.Supp. 785, 791, 792. See Fed.R.Civil P. 17.

### **Intervenor.**

An intervenor is a person who voluntarily interposes in an action or other proceeding with the leave of the court. See Intervention.

Bouvier's Law Dictionary defines The United States as:

“The territory of which these states are composed was at one time dependent generally on the crown of Great Britain, though governed by the local legislatures of the country. It is not within the plan of this work to give a history of the colonies; on this subject the reader is referred to Kent's Com. sect. 10; Story on the Constitution, Book 1; 8 Wheat. Rep. 543; Marshall, Hist. Colon. The United States of America are a corporation endowed with the capacity to sue and be sued, to convey and receive property. 1 Marsh. Dec. 177, 181. But it is proper to observe that no suit can be brought against the United States without authority of law.” **(In monetary suits eh???)**

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE,PART VI - PARTICULAR PROCEEDINGS, CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE  
SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS **(Most all cases again deal in monetary suits right? See 27 CFR 72.11)**

Sec. 3002. Definitions

(15) "United States" means -



(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States. [this would include states, counties and cities]

19 C.J.S. XVIII. FOREIGN CORPORATIONS A. 883. The very last sentence reads: "The United States government is a foreign corporation with respect to a state."

It goes on further to read: "Rather, it must dwell in the place of its creation, and cannot migrate to another sovereignty."

Now what do the courts say about this?

United States Government is a foreign corporation with respect to a state of the Union." in *Re Merriams Estate*, 36 N.E. 505, 141 N.Y. 479, affirmed 16 s. Ct, 1073, 41 L.Ed . 287

"Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, **a government can interface only with other artificial persons**. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that **no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them**." S.C.R. 1795, *Penhallow v. Doane's Administrators* (3 U.S. 54; 1 L.Ed. 57; 3 Dall. 54)

## Cases Juristic Person

1. FindLaw: UNITED STATES v. COOPER CORPORATION, 312 U.S. 600 (1941)  
<http://laws.findlaw.com/us/312/600.html> “shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.' The United States is a juristic person in the sense that it has capacity to sue upon contracts made with it or in vindication of its property rights. The Sherman Act, however, created new.”

2. FindLaw: U.S. V. SCOPHONY CORP. OF AMERICA , 333 U.S. 795 (1948)  
<http://laws.findlaw.com/us/333/795.html> “enforce its rights. See e.g., Pramatha Nath Mullick v. Pradyumna Kumar Mullick, 52 L.R.I.A. 245 (1925). Attribution of legal rights and duties to a juristic person other than man is necessarily a metaphorical process. And none the worse for it. No doubt, 'metaphors in law are to be narrowly watched,' Cardozo.”

3. FindLaw: HOPKINS FEDERAL SAVINGS & LOAN ASS'N v. CLEARY, 296 U.S. 315 (1935) <http://laws.findlaw.com/us/296/315.html> “also to put an end to corporations created by the states and turn them into different corporations created by the nation. A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi public, though for other purposes of classification the corporation ...”

4. FindLaw: CLARK v. WILLIARD, 292 U.S. 112 (1934)  
<http://laws.findlaw.com/us/292/112.html> “Bankruptcy or insolvency proceedings, whether the debtor is a natural or a juristic person, confer upon the receiver or assignee a title which, generally speaking, is without recognition outside of the state of his appointment except in subordination to the claims of local creditors. Security Trust Co. v. Dodd, Mead & Co., 173 U.S. 624 , 19 S.Ct. 545”

5. FindLaw: UNITED STATES v. CANDELARIA, 271 U.S. 432 (1926)  
<http://laws.findlaw.com/us/271/432.html> “It was settled in Lane v. Pueblo of Santa Rosa, 249 U.S. 110 , 39 S. Ct. 185, that under territorial laws enacted with congressional sanction each pueblo in New Mexico-meaning the Indians comprising the community-became a juristic person and enabled to sue and defend in respect of [271 U.S. 432, 443] its lands”

6. FindLaw: LANE v. PUEBLO OF SANTA ROSA, 249 U.S. 110 (1919)

<http://laws.findlaw.com/us/249/110.html> “If the plaintiff was not a legal entity and juristic person before, it became such under that law; and it retained that status after Congress included it in the territory of Arizona, for the act by which this was done extended to that territory all legislative enactments of the territory of New Mexico. Act Feb. 24, 1863, c. 56, 12 Stat. 664. The fact that Arizona has since become a state does not affect the plaintiff’s corporate status or its power to sue. See Kansas Pacific R. R. Co. v. Atchison, Topeka & Santa Fe R. R. Co., 112 U.S. 414 , 5 Sup. Ct. 208.”

7. FindLaw: VILAS v. CITY OF MANILA, 220 U.S. 345 (1911)

<http://laws.findlaw.com/us/220/345.html> “Upon the theory that the city, under its present charter from the government of the Philippine Islands, is the same juristic person and liable upon the obligations of the old city, these actions were brought against it. ...The city as now incorporated has succeeded to all of the property rights of the old city and to the right to enforce all of its causes of action. There is identity of purpose between the Spanish and American charters and substantial identity of municipal powers. The area and the inhabitants incorporated are substantially the same. But for the change of sovereignty which has occurred under the treaty of Paris, the question of the liability of the city under its new charter for the debts of the old city would seem to be of easy solution. And so the question was made to turn in the court below upon the consequence of a change in sovereignty and a re-incorporation of the city by the substituted sovereignty. “

8. UNITED STATES v SCOPHONY CORPORATION OF AMERICA Et Al No. 41, Supreme Court of The United States, 333 U.S 795; 68 S Ct. 855; 1948 U.S. Lexis 2851; 92 L Ed 1091; 77 U.S.P.Q. “ From the earliest times the law has enforced rights and exacted liabilities by utilizing a corporate concept – by juristic persons other than human beings. --- Law has also responded to religious needs in recognizing juristic persons other than human beings. --- Attribution of legal rights and duties to a juristic person other than a man is necessarily a metaphorical process.”

9. UNITED STATES v COOPER CORPORATION ET AL No. 484 Supreme Court of the United States, 312 U.S. 600; 61 S Ct. 742; 1941 U.S. Lexis 1088; 85 L Ed 1071 “While the United States is a juristic person in the sense that it can sue upon its contracts or in a vindication of its property rights, the term “person” does not include the sovereign, in common usage, nor, ordinarily, when employed in statutes.”

11. UNITED STATES v CANDELARIA Et Al, No. 208 Supreme Court of the United States, 271 U.S. 432; 46 S. Ct. 561; 1926 U.S. Lexis 633; 70 L Ed. 1023 “Under territorial laws, sanctioned by congress, a Pueblo community in New Mexico is a juristic person with capacity to sue and defend with respect to its lands.”

12. HOPKINS v CLEMSON AGRICULTURAL COLLEGE OF SOUTH CAROLINA No. 70 Supreme Court of the United States, 221 U.S. 636; 31 S Ct. 654; 1911 U.S. Lexis 1762; 55 L Ed 890 “On the contrary, **the statute created an entity, a corporation, a juristic person**, whose right to hold and sue property was coupled with the provision that it might sue and be sued, plead and be impleaded, **in its corporate name.**”

Now I think it is proven by American Jurisprudence, case law, code sections, common sense and statute and the UCC, (complete transparency) that the USA is a corporation and you, unless proven sovereign, are a CORPORATION doing business with the corporate USA. Now this sheds light on how they can say they are the sovereign. They are the sovereign of the corporate USA because they created it. However is this really who you are? Is this really who the US government is, according to what they make you believe?

Try looking at this a different way. Please make sure to read Federalist paper #10 re Republic vs Democracy and then think of how many run to vote and then ask yourself what are you voting for? The 2 names this election are 2 that you nor any other republican had anything to do with in picking of the 2 cousins (Bush & Kerry) In part re Republic vs Democracy, it reads:

“From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each

other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

**Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,--is enjoyed by the Union over the States composing it.** Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? **It will not be denied that the representation of the Union will be most likely to possess these requisite endowments.** Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? **In an equal degree does the increased variety of parties comprised within the Union, increase this security.** Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? **Here, again, the extent of the Union gives it the most palpable advantage.**

A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, **we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.** “

### *III. Law, contracts, and consent*

#### **Do we have law or a contract? Or is law the contract?**

After reading this entire section please come back to this paragraph and read it again and see your thoughts, and then REALLY read this paragraph. This I hope will also allow you understand what is meant by REALLY READING something. Quote from the ABA Revised Article 9. “A person obligated on a negotiable instrument, such as a maker or indorser, when notified to pay a transferee of the instrument, and under UCC Article 3 require the transferee to exhibit the instrument in order to demonstrate that the transferee is the person entitled to enforce the instrument. 3-501(b)(2) and 3-602(a). Revised Article 9 does not change this rule, nor does it explain whether a non-negotiable instrument must be exhibited by the transferee as a condition to payment by the obligated person.

Under Bouvier’s Law dictionary we find “law” to read:

“LAW. In its most general and comprehensive sense, law signifies **a rule of action**; and this term is applied indiscriminately to all kinds of action; whether animate or inanimate, rational or irrational. 1 Bl. Com. 38. In its more confined sense, **law denotes the rule, not of actions in general, but of human action or conduct**. In the civil code of Louisiana, art. 1, it is defined to be "a solemn expression of the legislative will." Vide Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 4; 1 Bouv. Inst. n. 1-3.

Now after reading this, is it not true that the **RULE** is the very agreement and contract that was signed by the 2 parties?

Also keep in mind that all sales are governed by Article 2. Sales and Leases. See 2-401.

Inside the New revised article 9, a book written by the American Bar, it reads **“Scope, Accounts, Article 9 has always applied to the SALE of “account. Revised Article 9 Continues this rule.”**



Notice how the word SALE was used. This means if there was no SALE there is no contract. No for most folks you would think “well since I got my yard supplies at Home Depot there was a sale. However if you used a credit card at Home Depot, where was the sale between you and the credit card? Where did the credit card get its money to pay Home Depot if it is a federal violation for them to use their own capital stock or use their own money? The biggest question here is not the merchant sale it’s the sale between you and the credit card company. Now ask yourself if there was no sale there how can there be any interest let alone any attachment?

Article 2 of the UCC covers sales and lets see the section regarding sales and what sales are regulated under.

**§ 2-106. Definitions: "Contract"; "Agreement"; "Contract for sale"; "Sale"; "Present sale"; "Conforming" to Contract; "Termination"; "Cancellation".**

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

**§ 2-401. Passing of Title; Reservation for Security; Limited Application of This Section.**

Each provision of this Article with regard to the rights, obligations and remedies of the seller , the buyer , purchasers or other third parties applies irrespective of title to the goods except where

the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501 ), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

### **§ 2-201. Formal Requirements; Statute of Frauds.**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

### **§ 2-206. Offer and Acceptance in Formation of Contract.**

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

### **§ 2-301. General Obligations of Parties.**

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay **in accordance with the contract** .(What governs the contract???)

### **§ 2-302. Unconscionable contract** or Clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Now for the signature part of this. There are 2 sections below relating to signature. One is under the general provision of Article 1 and the other falls under Article 3 with negotiable instruments.

### **§ 1-201. General Definitions.**

(39) "**Signed**" includes any symbol executed or adopted by a party **with present intention to authenticate a writing** .

### **§ 3-401. SIGNATURE.**

(a) A person is not liable on an instrument unless (i) the person **signed** the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402 .

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Notice the only thing required is intent of authentication. Would this not be the very acknowledgement of the agreement itself? Think about this one.

Before you get too far into this section you must understand the foundation of commercial law. As long as “**Good Faith**” is present there is a claim. However if good faith is not present no contract exists. Page 58 of the Revised Article 9 reads “The definition of “Good Faith” in current Article 9 is the UCC Article 1 definition, “honesty in fact.” 1-201(19). Consistent with revisions to other UCC Articles, Revised Article 9 has its own definition of “good faith” including “honesty in fact and the observance of reasonable commercial standards of fair dealing.” Rev 9-102(a)(43)”

Now for some specific section in the UCC regarding “Good Faith”

**§ 1-102. Purposes; Rules of Construction; Variation by Agreement.**

(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Act of the words "**unless otherwise agreed**" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

### **§ 3-103(4)**

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing. (On Cornell this section reads "[Reserved] "Wow why is it gone?)

### **§4-104(b)**

"Good Faith" see Section 3-103 (Notice this section is removed in its entirety out of the web version for Cornell law too)

### **§5-102(a)(7)**

(7) "**Good faith**" means honesty in fact in the conduct or transaction concerned.

### **§6-103(3)**

Article 6 is governed by sales "Bulk Sales" see 6-103(3)

### **§7-403 and 7-404**

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. (See 8-102(7) for definition of Entitlement holder)

### **§ 7-404. No Liability for Good Faith Delivery Pursuant to Receipt or Bill.**

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefore. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

### **§8 102(10)**

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3) , that person is the entitlement holder.

## **8-102(10)**

“Good Faith” for the purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing. [Again this section is Reserved on Cornell’s web site.]

## **§ 9-102(43)**

(43) "Good faith" means honesty in fact in the conduct or transaction concerned (**Again notice this section on Cornell Law reads “[Reserved]” Is this getting coincidental or what?????????**)

To summarize every section 1, 3,4,5,8, 9 all tell you good faith as in 1-105, 2 and 6 talk about sales yet direct you back to 1-105 for good faith provisions, 7 directs you to an entitled party, which is found in Article 8 and Article 8 brings you back to 1 for the good faith clause, plus it talks about an entitled party. And Cornell hides most the “Good Faith” provisions of the UCC.

Over time I have heard so much about the New Article 9 and how important it is to read it because it affects everything in commerce. First read the paragraph below and then look at the section from Article 9 itself and ask yourself how important it really is, or is not.

Now in order for Article 9 to pass any test one should ask themselves, If Article 9 governs any interest (regardless of form) yet the party asserting any interest can not do so without violating law, or there is evidence that that party asserting an interest really can not assert an interest based upon their own application and registration to do business in a given state, how can Article 9 even apply to them or you or even the issue?

### **[Subpart 2. Applicability of Article]**

#### **§ 9-109. SCOPE.**

##### **(a) [General scope of article.]**

Except as otherwise provided in subsections (c) and (d), this article applies to:

- (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien ;
- (3) a sale of accounts , chattel paper , payment intangibles , or promissory notes ;
- (4) a consignment ;
- (5) a security interest arising under Section 2-401 , 2-505 , 2-711 (3), or 2A-508 (5), as provided in Section 9-110 ; and
- (6) a security interest arising under Section 4-210 or 5-118 .

(b) [Security interest in secured obligation.]

The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

**(c) [Extent to which article does not apply.]**

This article does not apply to the extent that:

- (1) a statute, regulation, or treaty of the United States preempts this article;
- (2) another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
- (3) a statute of another State , a foreign country, or a governmental unit of another State or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the State, country, or governmental unit; or
- (4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5-114 .

**(d) [Inapplicability of article.]**

This article does not apply to:

- (1) a landlord's lien, other than an agricultural lien ;
- (2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9-333 applies with respect to priority of the lien;
- (3) an assignment of a claim for wages, salary, or other compensation of an employee;
- (4) a sale of accounts , chattel paper , payment intangibles , or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts , chattel paper , payment intangibles , or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account , payment intangible , or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral ;

(10) a right of recoupment or set-off, but:

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts ; and

(B) Section 9-404 applies with respect to defenses or claims of an account debtor ;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in Sections 9-203 and 9-308 ;

(B) fixtures in Section 9-334 ;

(C) fixture filings in Sections 9-501 , 9-502 , 9-512 , 9-516 , and 9-519 ; and

(D) security agreements covering personal and real property in Section 9-604 ;

Now this changes ones thoughts of what Article 9 really can or can not do.

Lets read on for a better understanding of law in it's commercial applications.

Also found in “The Revised Article 9” it reads “Form of Transaction. The form of the transaction or the label that the parties give to the transaction is irrelevant for the purposes of determining whether Article 9 applies. **Rather the determination is based on the economic reality of the transaction.**”



Law: That which must be obeyed and followed by citizens, subject to sanctions or legal consequences, Is a “law”. Citizens exist in the economic reality of corporate America.

In old English jurisprudence, “law” is used to signify an oath, or the privilege of being sworn; Many US citizens takes oaths, even teachers, and there are tons of privileges too.

Contract: A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation. An agreement, upon sufficient consideration, to do or not to do a particular thing.

According to Bouvier’s law dictionary we find this to read:

AGREEMENT, contract. The consent of two or more persons concurring, respecting the transmission of some property, right or benefit, with a view of contracting an obligation. Bac. Ab. h.t.; Com. Dig. h.t.; Vin. Ab. h.t.; Plowd. 17; 1 Com. Contr. 2; 5 East’s R. 16. It will be proper to consider, 1, the requisites of an agreement; 2, the kinds of agreements; 3, how they are annulled.

2.-1. To render an agreement complete six things must concur; there must be,

- 1, a person able to contract;
- 2, a person able to be contracted with;
- 3, a thing to be contracted for;
- 4, a lawful consideration, or quid pro quo;
- 5, words to express the agreement; (no signature again, only intent)
- 6, the assent of the contracting parties.

Plowd. 161; Co. Litt. 35, b.

An agreement between two or more parties, preliminary step in of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms.

According to Black’s Law 4th Agreement is: A coming or knitting together of minds; in law a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances;

Consent: A concurrence of wills. Voluntarily yielding the will to the proposition of another. Acquiescence or compliance therewith. Agreement; the act or result of coming into harmony or accord.

Accord: In practice. To agree or concur as one judge with another.

Agreements are contracts and contracts fall under the UCC. The UCC is the Uniform Commercial Code. The UCC has been around for thousands of years but just recently became the uniform law in all 50 states. As of July 1, 2001 it makes uniform, to draw less confusion on article 9 provisions only. Not all agreements fall under article 9. Some actually still fall under the prior Article 9 and then only IF article 9 itself applies.

Because secured parties do not have complete control over where issues of perfection may be litigated, a prudent secured party should prepare for the possibility that perfection may be determined by a court sitting in a state that has not enacted revised Article 9 (and, thus, will be applying the choice of law rules of former Article 9). If a dispute concerning the perfection arises in a federal (6) or state court of a particular state (the Forum State), both former Article 9 and revised Article 9 require the application of the choice of law rules in the Forum States Article 9 in order to determine the state (the Perfection State) whose *substantive* laws govern perfection of the security interest. (7) It should be noted that the Perfection State in many cases will *not* be the Forum State; rather, the version of Article 9 in effect in the Forum State will often direct the court to apply the laws of a different state to determine whether perfection exists.

The secured party should consider the possibility that more than one jurisdiction might be the Forum State and that there may be several Perfection States. The secured party should then consider whether to comply with any of the perfection rules of former Article 9 and, in the case of collateral under revised Article 9 that is not within the scope of former Article 9, whether to comply with any determinable perfection rules under other applicable law apart from former Article 9.

A secured party should consider complying with the *substantive* perfection rules of (i) revised Article 9, (ii) former Article 9, and (iii) other law to the extent any of the following applies:

Tangible collateral, such as ordinary goods and instruments, is or might in the future be located in a state other than the state in which the debtor is located under revised Article 9.

The debtors location, as determined under either former Article 9 or revised Article 9, is or might in the future be in a state other than the state in which the debtor is located under revised Article 9.

The collateral consists or will consist of assets, such as deposit accounts, that are outside the scope of former Article 9, and the perfection of a security interest in those assets, may require action in a state in which former Article 9 is still in effect.

Now for a complete understanding of “Default”. Page 4 of the ABA book entitled “The Default Provisions of Revised Article 9” reads: “the secured creditor cannot exercise its rights under part 6, default provisions, until after default. The first-time visitor to Article 9 may be surprised to discover that, like its predecessor, old Article 9, part 6 does not define “default”. Nor does any other provision of Article 9 or §1-201 (the “General Definitions” section of the UCC) define this all important term. Instead, the definition, which may be as long as the creditor’s arm and as broad as the counsel’s imagination, is left to the agreement of the parties.”

## **27 CFR 72.11 (code of federal regulations)**

**MEANING OF TERMS:** As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this section. Words in the Plural form shall include the singular, and vice versa, and words importing the masculine gender shall Include the feminine. The terms "includes" and "including“ do not exclude things not enumerated which are in the same general class.

**COMMERCIAL CRIMES:** Any of the following Types of crimes (FEDERAL OR STATE): Offenses Against the revenue laws; burglary; counterfeiting; forgery; kidnapping; larceny; robbery; illegal sale or possession of deadly weapons; prostitution (including soliciting, procuring, pandering, white slaving, keeping house of ill fame, and like offenses); extortion; swindling and confidence games; and attempting to commit, conspiring to commit, or

compounding any of the foregoing crimes. Addiction to narcotic drugs and use of Marijuana will be treated as if such were commercial crime.“ ALL CRIME IS COMMERCIAL!!!

## **More on Consent**

Michigan Legal Guidelines

### II. DETENTION AND ARREST

#### A. Levels of Encounters

When reviewing the legality of police interactions with citizens, courts initially assess the nature and extent of the contact. To aid in this analysis, interactions, or encounters, are divided into three conceptual categories. First, there are encounters of a consensual nature. This has sometimes been called the "common law right to inquire." This is a right to ask a question, enjoyed by all citizens, whether they work in law enforcement or not.

Occupying the next tier of encounters are interactions of a more intrusive character. These are encounters commonly called detentions, investigatory stops or Terry stops. The justifications offered by law enforcement for this more forceful contact must be based on facts that are specific and articulable, and lead to a rational inference or a reasonable suspicion that criminal activity is being undertaken.

The final level of encounter is a formal arrest. To justify this action, law enforcement officials must possess a higher degree of suspicion, i.e., "probable cause" to believe that a crime is being, or has been, perpetrated and that a specific person committed it.

#### B. Consensual Encounters - Right of Inquiry

The basic premise underlying a consensual encounter is that it is voluntary. Such an encounter is an interaction based on consent and is terminable by either party.

Law enforcement officers do not infringe on a citizen's Fourth Amendment rights by merely approaching him or her at random in a public place in order to ask a few questions, as long as a

reasonable person would understand that he or she could refuse to cooperate and excuse themselves from the exchange, if they choose to do so.

A bit about the UCC 1-207 or 1-308 section. A brief test of this section in practice.

**§ 1-308 (formally 1-207). Performance or Acceptance Under Reservation of Rights.**

(1) A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

**(2) Subsection (1) does not apply to an accord and satisfaction.**

According to Blacks law dictionary. Accord means: Accord: In practice. “An agreement to accept..: (see accord and satisfaction)

The same blacks law dictionary for accord and satisfaction means: “An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action different from, and usually less than, what might be legally enforced.”

Now UCC 1-308 (or 1-207) in section (1) makes one believe they have their rights reserved. However after reading (2) and the definitions of “accord” and “accord and satisfaction” it is easy to see that you are still a party. Even though you are reserving your rights as a party under commercial law are you not reserving ALL your rights but ONLY the rights that come from the very agreement you admitted you are a party to?

In reality lets take a look at a hypothetical contract and see what this means.

A man goes to a bank and gets a loan. The bank told this man that he would be borrowing the banks money for this loan. The man later finds out that the bank in fact did not loan their own capital stock and that it is a violation for a bank to use their own capital stock to make a loan. This man wishes to end business, payment, with the bank yet he signed all his documents with

UCC 1-308 (or 1-207). He also puts this UCC 1-308 (or 1-207) on all communication to the bank explaining his position.

A very important question at this time is: How can he, in this hypothetical scene, keep asserting he is a party to the agreement but wants all his rights reserved? Remember the agreement IS the LAW in commercial law. He is saying that he is A PARTY to a void and deceptive contract.

If a contract is bad and void and unfair, deceptive, or false then why would one even attempt to admit to being A PARTY to it?

Just thoughts to ponder as you go through this.

The District of Columbia has adopted the UCC. It is irrelevant if the Fed's have adopted it or not as they have no venue in which to use it. The several State's acquiesced via the Buck Act to become 'states within states' (UCC 1-105) and support the Fed's in their bankruptcy.

If the government is operating under the constitution, then it is operating under Article 1, section 10, concerning the noninterference with "obligations of contract" and thusly OUTSIDE any constitutional restraints or reservations. (Title 26 being "Private Law", i.e. colorable, falls here)

Government at every level (Collectively) has minimal contacts with the people, i.e. driver license, voter registration, fishing license, mobile home registration, trailer & vehicle registration, and so on...ad nauseam. These are all "agreements" under the UCC.

A "contract" is completed when there is a "Meeting of the minds" and not necessarily when products, papers, funds or services are exchanged, etc. (There are court cases.)

ALL GOVERNMENTAL FUNCTIONS are now "PRIVATE", not "public" functions. To prove this statement read the following case quote as relevant to any discussion of "governmental authority" regarding the "money issue". All courts in every State of the Union, (And Federal as well) operate under the "Clearfield Doctrine" from the case of Clearfield Trust Co. v. US, 318

US 363, (1943). This case explains the Clearfield Doctrine as this: "Governments descend to the level of a mere private corporation and takes on the character of a mere private citizen [where private corporate commercial paper {Federal Reserve Notes} are concerned]..." "For purposes of suit, such corporations and individuals are regarded as an entity entirely separate from government." Bank of US v. Planters Bank, 9 Wheaton (22US) 904, 6L.Ed. 24. {Added}

The definition of "money" becomes extremely relevant once the above is known and understood. So, the question is now "What is the substance of the money used by the government entity coming against you"? "MONEY" as defined in the Constitution for the several States united at Article I, section 10, clause 1 or "MONEY" as defined in the Uniform Commercial Code (UCC) adopted by your state legislature? We have had cases dismissed because the prosecutor would not let us question the officer as to "What medium of exchange do you get paid in?"

The UCC itself states that its definitions are controlling over dictionary definitions. See those UCC definitions as the words are used in the following instances: Creditor, Debtor, Remedy, Defendant, Document to Title, Representative, Security Interest, and loads more in the same section you cited for the definition of money in your article. You must understand that we are all presumed to be the "DEBTOR" in all interactions with the now private government "CREDITOR", dealing in the bankrupt DEBT/CREDIT system now prevalent throughout the country.

When any State agency comes against you, normally no Constitutional arguments can be allowed since it is presumed that you are dealing, knowingly, voluntarily and willfully, in the COMMERCIAL LAW OF CONTRACTS, implied or written. In that "State" (State of the Forum), you lose all protections of both State and Federal Constitutions. In your encounter with the term "State" be advised that it does not mean the geographical area that you live in. The term "state" has at least seven (7) meanings in most dictionaries. See UCC 1-105 (1) on separate states or nations.

In Black's Law Dictionary, under the definition of "forum contractus" is states: Forum contractus. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction.

You will note it reads the "COURT" where a contract is made... We all are guilty of "contracting in" to the jurisdiction & venue of the courts by our answering "Yes" when asked if we "understand the charges"... See Black's definition of "Understand" and you will find it to mean "Agreement".

Further, see Black's on "Lex contractus. In conflicts, the law of the place where the contract was formed, though the term today has undergone changes from the time that substantive questions of law were decided by the law of the place of the making while procedural questions were decided by the law of the forum."

Also see Black's on "Lex fori. The law of the forum, or court; that is, the "positive law" of the state, country, or jurisdiction of whose judicial system the court where the suit is brought or remedy sought is an integral part. Substantive rights are determined by the law of the place where the action arose, "lex loci," while the procedural rights are governed by the law of the place of the form, "lex fori." "Mitchell v. Mitchell, La.App. 5 Cir., 483 So.2d 1152, 1154. (Emphasis added)

See Black's on "Public Revenue" (Public Money) and you will find it to state that those funds collected go into the government's treasury. Since we know that all the "revenue" now collected goes to the Federal Reserve (A non-government private bank), the IMF and the World Bank, and not to the government's treasury, we can safely state they are not collecting "public revenue" or dealing in "public money". Correct? (See Grace Commission Report during former President Reagan's Administration). If it is not Public Revenue it must be Private Revenue. Correct?

Under this PRIVATE system the only CLAIM by a "creditor", against a "debtor", is via the "Financing statement" or the "meeting of the minds", "understanding", i.e. "AGREEMENT". Ask for their name to see who you are "dealing" with. Ask for their claim in the form of a



financing statement, contract, agreement, evidentiary instrument, etc. bearing your bona fide signature, wherein you have agreed to the relationship of Creditor & Debtor. No evidence of a "Contract", there can be no Debt, let alone a Debtor. The UCC itself states "No person is liable on an instrument unless his signature appears thereon" UCC 3-401 (1). It then goes on to tell how "A signature is made...". (2)

A (UCC Definitions) "Person", "Party", is presumed to have the requisite contract. When you demand they produce it and they fail that is "material evidence" of the nonexistence of the agreement. If they can't produce it, it is a false claim and they are bearing false witness and shall suffer punishment therefore...

UCC 1-201 definitions section says at (12) **Creditor: "includes...an executor or administrator of an insolvent debtor or assignee's estate."** Question: Are all "administrative/administrators" in government working as such for "an insolvent debtor", i.e. the Federal Bankrupt government? If your answer is yes, see next.

It is well settled in administrative law that: "It is the accepted rule, not only in state courts, but, of the federal courts as well, that when a judge is enforcing administrative law they are described as mere 'extensions of the administrative agency for superior reviewing purposes' as a ministerial clerk for an agency..." 30 Cal 596; 167Cal 762."A judge ceases to set as a judicial officer because the governing principals of administrative law provides that courts are prohibited from substituting their evidence, testimony, record, arguments and rationale for that of the agency. Additionally, courts are prohibited from their substituting their judgments for that of the agency." AISI v US, 568 F2d 284."...judges who become involved in enforcement of mere statutes (civil or criminal in nature and otherwise), act as mere "clerks" of the involved agency..." K.C. Davis, ADMIN. LAW, Ch. 1 (CTP. West's 1965 Ed.) "...their supposed 'court' becoming thus a court of limited jurisdiction' as a mere extension of the involved agency for mere superior reviewing purposes."K.C. Davis, ADMIN. LAW, P. 95, (CTP, 6 Ed. West's 1977) FRC v GE 281 US 464;Keller v PE, 261 US 428.

Thus, the federal government is "bankrupt" (UCC definition) (HJR 192); The state governments have agreed to assist (Administration) in the bankruptcy; They are both using "private commercial paper" as "money"; They have become "private corporations or individuals", by doing so; They are therefore "...an entity entirely separate from government"; The UCC is the codification of the international "law of contracts", on the subject; There is no "fraud" involved as it all involves "obligations of contract" even God enforces bad contracts. A party is not a "PARTY" to the action until his "signature" on an "instrument" is produced! A party may waive "rights" (UCC = "Remedy") by failure to claim them timely. (US v. Johnson ) We are all participants in the largest "scam" (Blacks Definition) ever devised by man. Thus, The Constitution for the several States United is irrelevant to the lawfulness of the UCC.

### **contracts: an overview**

Contracts are promises that the law will enforce. The law provides remedies if a promise is breached or recognizes the performance of a promise as a duty. Contracts arise when a duty does or may come into existence, because of a promise made by one of the parties. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Adequate consideration is a benefit or detriment which a party receives which reasonably and fairly induces them to make the promise/contract . For example, promises that are purely gifts are not considered enforceable because the personal satisfaction the grantor of the promise may receive from the act of giving is normally not considered adequate consideration. Certain promises that are not considered contracts may, in limited circumstances, be enforced if one party has relied to his detriment on the assurances of the other party.

Contracts are mainly governed by state statutory and common (judge-made) law and private law. Private law principally includes the terms of the agreement between the parties who are exchanging promises. This private law may override many of the rules otherwise established by state law. Statutory law may require some contracts be put in writing and executed with particular formalities. Otherwise, the parties may enter into a binding agreement without signing a formal written document. See § 110 of The Restatement. Most of the principles of the common law of contracts are outlined in the Restatement Second of The Law of Contracts published by the American Law Institute. See Restatement (Second) of Contracts. The Uniform Commercial

Code, whose original Articles have been adopted in nearly every state, represents a body of statutory law that governs important categories of contracts. The main Articles that deal with the law of contracts are Article 1 (General Provisions) and Article 2 (Sales). Sections of Article 9 (Secured Transactions) governs contracts assigning the rights to payment in security interest agreements. Contracts related to particular activities or business sectors may be highly regulated by state and/or federal law. *See Law Relating To Other Topics Dealing with Particular Activities or Business Sectors.*

### **secured transaction law: an overview**

A security interest arises when in exchange for a loan a borrower agrees, in a security agreement, that the lender (the secured party) may take specified collateral owned by the borrower if he or she should default on the loan. A security interest also provides the secured party with the assurance that if the debtor should go bankrupt he or she may be able to recover the value of the loan by taking possession of the specified collateral instead of receiving only a portion of the borrowers property after it is divided among all creditors. *See Bankruptcy.* Security agreements are contracts. Article 9 of the Uniform Commercial Code governs security interests in personal property. It has been adopted, with some modifications, by every state. A security agreement must comply with other state laws governing contracts. *See Contracts.*

Article 9 of the Uniform Commercial Code covers most types of security agreements for personal property that are both consensual and commercial. *See* § 9-102(2) and § 9-104 of the code. This includes fixtures, personal property that is "fixed" to real property such as a water heater. Statutory liens (e.g. a mechanics lien) are generally not governed by Article 9 but by the individual statute that creates them. *See* §§ 9-102(2) & 9-310 of the code. Article 9 contains a statute of frauds which requires a security agreement to be in writing unless it is pledged. *See* § 9-203(1) of the code. A pledged security agreement arises when the borrower transfers the collateral to the lender in exchanger for a loan (e.g., a pawnbroker). The "perfection" of a security agreement allows a secured party to gain priority to the collateral over any third party. To perfect a security agreement the filing of a public notice is usually required. *See* §§ 9-302 - 9-305 of the code.

## **sales law: an overview**

Transactions for the sale (and leasing) of goods is governed mainly by sales laws of each state. Every state, with the exception of Louisiana, has adopted, Article Two of the Uniform Commercial Code (UCC) as the main body of law regulating transactions in goods. Goods are defined as all things movable and identified to the contract of the sale. See § 2-105 of the UCC. It does not include secured transactions, leases, money exchanged as the price, or real property (land and property permanently attached to a piece of land). *See* Secured Transactions. To be identified to the contract a good must be existing and one of the objects that is or will be exchanged. *See* §§ 2-106(1) & 2-501(1) of the UCC. Transactions between merchants and consumers and those solely between merchants are regulated by Part Two. All transactions that are for more than \$500 must be in writing. *See* § 2-201(1) of the UCC.

Article 2 regulates every phase of a transaction for the sale of goods and provides remedies for problems that may arise. It provides for implied warranties of merchantability and fitness. *See* §§ 2-314 - 2-315 of the UCC. There is also a duty of good faith in the UCC that is applicable to all the sections. *See* § 1-203 of the UCC. If a contract contains unconscionable provisions a court may discard the contract or the provisions. *See* § 2-203 of the UCC.

## **negotiable instruments law: an overview**

Negotiable instruments are mainly governed by state statutory law. Every state has adopted Article 3 of the Uniform Commercial Code (UCC), with some modifications, as the law governing negotiable instruments. The UCC defines a negotiable instrument as an unconditioned writing that promises or orders the payment of a fixed amount of money. Drafts and notes are the two categories of instruments. A draft is an instrument that orders a payment to be made. An example is a check. A note is an instrument that promises that a payment will be made. Certificates of deposit (CD's) are notes. Drafts and notes are commonly used in business transactions to finance the movement of goods and to secure and distribute loans. To be considered negotiable an instrument must meet the requirements stated in Article 3. Negotiable instruments do not include money, payment orders governed by article 4A (fund transfers) or to securities governed by Article 8 (investment securities).

Checks are negotiable instruments but are mainly covered by Article 4 of the UCC. See also Banking Law. Secured transactions may contain negotiable instruments but are predominantly covered by Article 9 of the UCC. *See also* Secured Transactions. If there is a conflict between the Articles of the UCC both Article 4 and 9 govern over Article 3.

### **tort law: an overview**

Torts are civil wrongs recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. While some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms. The injured person may sue for an injunction to prevent the continuation of the tortious conduct or for monetary damages. (*See* Damages) Among the types of damages the injured party may recover are: loss of earnings capacity, pain and suffering, and reasonable medical expenses. They include both present and future expected losses.

There are numerous specific torts including trespass, assault, battery, negligence, products liability, and intentional infliction of emotional distress. Torts fall into three general categories: intentional torts (*e.g.*, intentionally hitting a person); negligent torts (causing an accident by failing to obey traffic rules); and strict liability torts (*e.g.*, liability for making and selling defective products - *See* Products Liability). Intentional torts are those wrongs which the defendant knew or should have known would occur through their actions or inactions. Negligent torts occur when the defendant's actions were unreasonably unsafe. Strict liability wrongs do not depend on the degree of carefulness by the defendant, but are established when a particular action causes damage.

Tort law is state law created through judges (common law) and by legislatures (statutory law). Many judges and states utilize the Restatement of Torts (2nd) as an influential guide. The Restatement is a publication prepared by the American Law Institute whose aim is to present an orderly statement of the general law of the United States.

## ***IV. Choice of law (jurisdiction)***

When first diving into this extremely important topic one must have a clear understanding of the CHOICE parties have for the “choice of Law” option based upon the agreement.

Inside The New Article 9 on page 56 it reads “Both current and Revised Article 9 provide that **the secured party is generally liable to the debtor** for any loss caused by the secured party’s failure to comply with the enforcement provisions of Article 9. 9-507(1); Revised 9-625(b). But case law under current Article 9 in non-uniforms in applying 9-507(1) to determine what sanctions may be imposed on the non-complying secured party. Revised Article 9 provides that the value of the collateral is presumed to have equaled the entire secured debt (eliminating the deficiency claim), unless the secured party is able to rebut this presumption. Rev 9-626(a)(3). Under both current and Revised Article 9, a statutory penalty may be imposed on a non-complying secured party, without damages being proven, where the collateral is consumer goods. 9-507(1); Rev 9-625(c)(2)”

### **jurisprudence: an overview**

The word *jurisprudence* derives from the Latin term *juris prudentia*, which means "the study, knowledge, or science of law." In the United States jurisprudence commonly means the philosophy of law. Legal philosophy has many aspects, but four of them are the most common. The first and the most prevalent form of jurisprudence seeks to analyze, explain, classify, and criticize entire bodies of law. Law school textbooks and legal encyclopedias represent this type of scholarship. The second type of jurisprudence compares and contrasts law with other fields of knowledge such as literature, economics, religion, and the social sciences. The third type of jurisprudence seeks to reveal the historical, moral, and cultural basis of a particular legal concept. The fourth body of jurisprudence focuses on finding the answer to such abstract questions as what is law? How do judges (properly) decide cases?

Apart from different types of jurisprudence, different schools of jurisprudence exist. Formalism, or conceptualism, treats law like math or science. Formalists believe that a judge identifies the relevant legal principles, applies them to the facts of a case, and logically deduces a rule that will govern the outcome of the dispute. In contrast, proponents of legal realism believe that most

cases before courts present hard questions that judges must resolve by balancing the interests of the parties and ultimately drawing an arbitrary line on one side of the dispute. This line, realists maintain, is drawn according to the political, economic, and psychological inclinations of the judge. Some legal realists even believe that a judge is able to shape the outcome of the case based on personal biases.

Apart from the realist-formalist dichotomy, there is the classic debate over the appropriate sources of law between positivist and natural law schools of thought. Positivists argue that there is no connection between law and morality and the only sources of law are rules that have been expressly enacted by a governmental entity or court of law. Naturalists, or proponents of natural law, insist that the rules enacted by government are not the only sources of law. They argue that moral philosophy, religion, human reason and individual conscience are also integrate parts of the law.

There are no bright lines between different schools of jurisprudence. The legal philosophy of a particular legal scholar may consist of a combination of strains from many schools of legal thought. Some scholars think that it is more appropriate to think about jurisprudence as a continuum.

Now that you understand what “Law” “Contracts” and Jurisprudence” are, lets take a closer look at the choice of law sections of the UCC.

One of the most important sections of the ABA book Revised Article 9 is on page 47. It reads “Choice of Law. To determine a security interest has attached, has been perfected, or has priority over another interest, it is necessary to ask what law applies. If a dispute occurs in a particular forum in a UCC jurisdiction, the first step is to look to the choice of law rules from Article 9 of the forum jurisdiction to determine which jurisdiction’s laws the forum jurisdiction is required to apply. The choice of law rules in the UCC do not address what law a non-UCC jurisdiction would apply. Contract Choice of Law. The governing law specified in the security agreement will usually be respected by the forum jurisdiction for determining the contractual rights and obligations of the debtor and the secured party, as long as the transaction bears a reasonable relation to the jurisdiction chosen. 1-105(1). The secured party and the debtor may not by their

contract vary the mandatory choice of law rules in current or Revised Article 9 dealing with the perfection and priority of a security interest.”

## **§ 1-105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.**

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. **Section 2-402.**

Applicability of the Article on Leases. Sections 2A-105 and 2A-106.

Applicability of the Article on Bank Deposits and Collections. **Section 4-102.**

Governing law in the Article on Funds Transfers. **Section 4A-507.**

Letters of Credit. **Section 5-116.**

Bulk sales subject to the Article on Bulk Sales. **Section 6-103.**

Applicability of the Article on Investment Securities. Section 8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9-301 through 9-307 .

### **§ 2-402. Rights of Seller's Creditors Against Sold Goods.**

(1) **Except as provided in subsections (2) and (3),** rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2-502 and 2-716 ).



(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale **as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith** and current course of trade by a merchant -seller for a **commercially reasonable** time after a sale **or identification is not fraudulent.**

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference.

### **§ 3-102. SUBJECT MATTER.**

(a) This Article applies to negotiable instruments . It does **not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.**

**(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.**

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

### **§ 4-102. APPLICABILITY.**

**(a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.**

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

### **§ 4A-507. CHOICE OF LAW.**

(a) The following rules apply **unless the affected parties otherwise agree or subsection (c) applies:**

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant

to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. **The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.**

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue **is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.**

### **§ 5-116. Choice of Law and Forum.**

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

**(d) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.**

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

### **§ 5-103. Scope.**

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), Sections 5-102(a) (9) and (10), 5-106(d) , and 5-114(d) , and except to the extent prohibited in Sections 1-302 and 5-117(d) , the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

### **§ 6-103. APPLICABILITY OF ARTICLE.**

**(1) Except as otherwise provided in subsection (3),** this Article applies to a bulk sale if:

(a) the seller's principal business is the sale of inventory from stock; and

(b) on the date of the bulk-sale agreement the seller is located in this state or, if the seller is located in a jurisdiction that is not a part of the United States , the seller's major executive office in the United States is in this state.

(2) A seller is deemed to be located at his [or her] place of business. If a seller has more than one place of business, the seller is deemed located at his [or her] chief executive office.

**(3) This Article does not apply to:**

**(a) a transfer made to secure payment or performance of an obligation;**

**(b) a transfer of collateral to a secured party pursuant to Section 9-609 ;**

**(c) a sale of collateral pursuant to Section 9-610 ;**

**(d) retention of collateral pursuant to Section 9-620 ;**

**(e) a sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero;**

### **§ 8-110. APPLICABILITY; CHOICE OF LAW.**

**(a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:**

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) acquisition of a security entitlement from the securities intermediary ;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

**(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer.** An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

## ***V. Rules on Perfection, Attachment and Priority***

The most important elements that must be known and understood under the UCC are:

1. **Perfection** (filing. Not always mandatory)
2. **Attachment** (Most powerful of all. No attachment, no perfection or control).
3. **Possession** (in possession of document)
4. **Control** (not in possession but in control. Someone holds for you)
5. **Priority** (Whoever attaches 1<sup>st</sup> has priority. Priority grants enforcement)

**Enforcement to the collateral can not be accomplished until the above are met.**

### **Perfection:**

The fundamental policy underlying perfection is to permit discovery of security interests without complete reliance upon making an inquiry through the debtor. (Source: ABC's of the UCC Revised Article 9) 9-310. Filing

### **§ 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.**

(a) [General rule: perfection by filing.]

**Except as otherwise provided in subsection (b) and Section 9-312(b),** a financing statement must be filed to perfect all security interests and agricultural liens.

(b) [Exceptions: filing not necessary.]

The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under Section **9-308**(d), (e), (f), or (g);
- (2) that is perfected under Section **9-309** when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a) ;

- (4) in goods in possession of a bailee which is perfected under Section 9-312(d) (1) or (2);
- (5) in certificated securities, documents, goods , or instruments which is perfected without filing or possession under Section 9-312(e) , (f) , or (g);
- (6) in collateral in the secured party 's possession under Section 9-313 ;
- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 9-313 ;
- (8) in deposit accounts , electronic chattel paper , investment property , or letter-of-credit rights which is perfected by control under Section 9-314 ;
- (9) in proceeds which is perfected under Section 9-315 ; or
- (10) that is perfected under Section 9-316.

(c) [Assignment of perfected security interest.]

If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

### **§ 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED; CONTINUITY OF PERFECTION.**

(a) [Perfection of security interest.]

Except as otherwise provided in this section and Section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9-310 through 9-316 have been satisfied. **A security interest is perfected when it attaches** if the applicable requirements are satisfied before the security interest **attaches**.

(b) [Perfection of agricultural lien.]

An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) [Continuous perfection; perfection by different methods.]

A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) [Supporting obligation.]

Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) [Lien securing right to payment.]

Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) [Security entitlement carried in securities account.]

Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) [Commodity contract carried in commodity account.]

Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

### **Attachment:**

Attachment does not mean attachment by contract to an individual like most may believe or try to find. They will not find it anywhere. The reason is simple. The UCC only allows for an interest to be created in a property right based upon an agreement.

Attachment requires 3 things and without these 3 things no attachment, perfection, possession, let alone priority or enforcement can exist.

1. A security agreement be made.
2. Value be given
3. The Debtor have right in the collateral to begin with

Attachment can be found also in “The Revised Article 9” book from the American bar to read “Attachment is a term used to describe the moment at which a security interest becomes enforceable against the debtor.” Now a question to ask yourself here. If the debtor never

transferred nor assigned anything because of a deceptive, false, bogus or void contract how can one have attachment? See how the debtor is a very key role here?

Keep in mind again in the same book from the ABA it reads “As a general matter, the debtor can only grant a security interest in whatever ownership or other rights it holds. Similarly, the secured party can generally enjoy no greater rights in the collateral than the debtor holds.”

A lot of folks get confused with the Debtor and Secured Party issue. Who has the power? Most think the Secured Party has the power however if the debtor is the seller of or the owner of the property to begin with who exactly gives power or rights or any interest in the property? The Debtor is a more powerful position to be in after thinking logically to begin with.

Also for clarification the ABA Revised Article 9 book states “It should be emphasized that only an attached security interest can become a perfected security interest.” With this in mind it is very easy to prove the debtor had the right otherwise no secured party could have an interest to begin with.

### **§ 9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT.**

The following security interests **are perfected when they attach:**

- (1) a purchase-money security interest in consumer goods , except as otherwise provided in Section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(a) ;
- (2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles ;
- (3) a sale of a payment intangible ;
- (4) a sale of a promissory note ;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under Section 2-401 , 2-505 , 2-711 (3), or 2A-508 (5), until the debtor obtains possession of the collateral;



- (7) a security interest of a collecting bank arising under Section 4-210 ;
- (8) a security interest of an issuer or nominated person arising under Section 5-118 ;
- (9) a security interest arising in the delivery of a financial asset under Section 9-206(c) ;
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary ;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

### **Possession:**

#### **§ 9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.**

(b) [Control or possession of certain collateral.]

Except as otherwise provided in Section 9-315(c) and (d) for proceeds :

- (1) a security interest in a deposit account may be perfected **only** by control under Section 9-314 ;
- (2) and except as otherwise provided in Section 9-308(d)** , a security interest in a letter-of-credit right may be perfected only by control under Section 9-314 ; and
- (3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313 .

(f) [Temporary perfection: goods or documents made available to debtor.]

A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days

without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) [Temporary perfection: delivery of security certificate or instrument to debtor.]

A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

### **Control:**

#### **§ 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.**

§ 9-310 (b)8: in deposit accounts , electronic chattel paper , investment property , or letter-of-credit rights which is perfected by control under Section 9-314.

A security interest in deposit accounts , electronic chattel paper , or letter-of-credit rights is perfected by control under Section 9-104 , 9-105 , or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) [Investment property: time of perfection by control; continuation of perfection.]

A security interest in investment property is perfected by control under Section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, **the debtor has or acquires possession** of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

**(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.**

**§ 9-314. PERFECTION BY CONTROL.**

(a) [Perfection by control.]

A security interest in investment property , deposit accounts , letter-of-credit rights , or electronic chattel paper may be perfected by control of the collateral under Section 9-104 , 9-105 , 9-106 , or 9-107 .

(b) [Specified collateral: time of perfection by control; continuation of perfection.]

A security interest in deposit accounts , electronic chattel paper , or letter-of-credit rights is perfected by control under Section 9-104 , 9-105 , or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) [Investment property: time of perfection by control; continuation of perfection.]

A security interest in investment property is perfected by control under Section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**Priority:**

Priority is what is needed for enforcement under the UCC. Now for those who still believe Article 9 is where it all is please allow me to quote from the ABA regarding the Revised Article 9 and Priority. Page 13 reads in part “The rebuttal presumption rule that applies to deficiencies in commercial transactions does not apply to a consumer transaction.

Now the UCC defines a consumer transaction as one in which:

1. an individual incurs an obligation primarily for personal, family, or household purposes.

2. a security interest secures the obligation, and
3. any of the collateral is held primarily for personal, family, or household purposes.

Please read on to have a better understanding knowing now that you must leave the consumer transaction out of the equation.

### **Priority Rules:**

#### Priority Rule v. Cutoff Rule

A cutoff rule permits a qualifying party to take the collateral free of competing interest. If a cutoff rule does not apply, then a priority rule is used.

Priority Rules determine which claimants interest will be first satisfied out of the collateral's value. Once that interest is satisfied, the remaining value of the collateral is available to the other claimants.

#### **Priority Based on First in Time.**

Fortunately, some general principles underlie most priority rules, making them easier to understand, remember, and apply. The basic priority principle awards priority to the party who is first in time. The key to understanding security interest priorities is knowing when priority is based on first to attach, first to file, or first to perfect, and when an exception-such as cutoff rule-permits a subsequent interest to prevail. The answers to these questions depend on the nature of the competing claims and, often, the nature of the claimed collateral.

#### **Pre-filing for Priority**

Even though filing is a method of perfection, perfection cannot occur until the security interest has attached. 9-308(a).

Attachment does not occur until the creditor has given value, the debtor has the rights in the property, and the debtor has by agreement created the security interest.

### **§ 9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED; CONTINUITY OF PERFECTION.**

(a) [Perfection of security interest.]

Except as otherwise provided in this section and Section 9-309 , a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

**§ 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.**

1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien **to attach** or become effective has priority if conflicting security interests and agricultural liens are unperfected.

**§ 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF UNPERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN.**

(a) Conflicting security interests and rights of lien creditors.]

An unperfected security interest or agricultural lien is subordinate, lower right, to the rights of:

(1) a person entitled to priority under Section 9-322 ; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) [Buyers that receive delivery.]

Except as otherwise provided in subsection (e), a buyer, other than a secured party , of tangible chattel paper , documents, goods , instruments , or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) [Lessees that receive delivery.]

Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) [Licensees and buyers of certain collateral.]

A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) [Purchase-money security interest.]

Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise **between the time the security interest attaches** and the time of filing.

**§ 9-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER ARTICLES; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER ARTICLE 8.**

(a) [Rights under Articles 3, 7, and 8 not limited.]

This article (Article 9) does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) [Protection under Article 8.]

This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under Article 8.(c) [Filing not notice.]

Filing under this article (Article 9) does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

I hope that now with a slightly better understanding of the code you have picked up the importance of attachment, as it is the key and fundamental part of priority and having any standing for a possible claim. As you have read this section was mostly copy and pasted but with the red highlighted sections it should have been better understood and followed.

Again keep in mind just because someone, including yourself, may have a UCC filed does not mean you have any claim or right. There are some very tricky rules that one must comply with or else they will be in for a shock when the claim is nothing more than giving the UCC unit \$ for filing nothing at all.

**Now for some good faith, reasonableness, and care. Ever heard these terms?  
What do they mean? How can anyone have any recourse to violations of any  
of these all important terms?**

§ 1-102. Purposes; Rules of Construction; Variation by Agreement.

(2) Underlying purposes and policies of this Act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Act may be varied by agreement , except as otherwise provided in this Act and **except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement** but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

**§ 1-203. Obligation of good faith.**

Every contract or duty within this Act **imposes an obligation of good faith** in its performance or enforcement.

## What is an Entitlement right?

**8-102(g)** “Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement under section 8501(2)(b) or (c), that person is the entitlement holder.

**8-501** “Securities account” defined; acquisition of security entitlement; conditions; directly held financial asset; issuance not as security entitlement.

(1) “Securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary does 1 or more of the following:

(a) Indicates by book entry that a financial asset has been credited to the person’s securities account.

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person’s securities account.

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person’s securities account.

(3) If 1 or more conditions described in subsection (2)(a), (b), or (c) have been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.



A security entitlement is actually a sui generis form of property interest, a hybrid between property and contract consisting of a bundle of several carefully meshed components.

1. Property interest in the underlying security or financial asset.
2. Rights against 3rd parties.
3. In personam rights against the intermediary.

A combination of property rights and contract rights resulting from an undertaking of one to provide to another the rights that constitute a security or certain other assets.

An entitlement holder acquires a security entitlement when the intermediary credits the asset to the entitlement holder's account.

Now before going on further with who is or who is not entitled to a document or a right please read this {reface regarding Article 8 from the American Bar Association).

## **Preface to Article 8 Security Entitlements**

### **Chapter 1: Introduction**

#### **A. A Brief History**

The major concepts underlying the current version of Article 8 can be best understood in light of a short historical overview.

The drafting of Article 8 began in the 1940s and 1950s with the purpose of conferring on a wider variety of securities the negotiable status (including the ability of transferees to acquire their interests free of adverse claims; see Chapter 3.B) then enjoyed by instruments under the Uniform Negotiable Instruments Law and by conventional stock certificates under the Uniform Stock Transfer Act. At that time the existence of physical instruments, e.g., stock certificates, was a key element of the securities holding system and their delivery a necessary step in any transfer. Whenever securities were traded, whether the trade was initiated in person, over the telephone or, more recently, by computer, the settlement of the trade required that physical certificates be

delivered from the seller to the purchaser. In the case of securities in registered form (as opposed to bearer form, discussed *infra*), the securities often had to be reregistered in the purchaser's name on the issuer's books or indorsed to the purchaser or accompanied by an executed stock or bond power (giving the purchaser authority to reregister the securities).

The first completed versions of Article 8 (approved in 1952, 1953, and 1958, and not widely enacted) recognized the concept of constructive delivery of securities held in "street name" by brokers, but it was not until the 1962 version, prompted by a variety of nonuniform amendments adopted in New York, that Article 8 included provisions for the transfer and pledge of securities held within a central depository system or "clearing corporation." (Clearing corporations are now defined as entities registered as clearing agencies under federal securities law, federal reserve banks, and certain other regulated persons that provide clearance or settlement services.) These provisions were not, however, adequate to deal with the growing pattern of multiple intermediary relationships.

Transfer of physical certificates was (and remains) a highly labor-intensive and complicated process. By the late 1960s, as a result of increased trading activity and the nature of the steps involved to effect transfer, a so-called "paperwork crunch" ensued: the securities industry's system for processing the settlement of transactions simply became overburdened. One response to this problem came from the U.S. Treasury's Bureau of the Public Debt, which issued regulations in 1967 providing for the issuance and maintenance of Treasury bills, notes, and bonds in completely intangible form. (The current version of these regulations is described briefly at the end of this chapter.) Another response came in the form of certain revisions to Article 8 itself, adopted by the UCC's sponsoring organizations in 1978. This version of Article 8 sought to reduce the systemic burden of transferring physical certificates by recognizing the role of multiple intermediary relationships (as the earlier versions had not) and by providing for a system in which issuers would no longer need to issue certificates at all. Instead, ownership of certain securities ("uncertificated" securities) could be reflected merely by an entry in the records of the issuer in favor of the owner. Transaction confirmations and book entries by intermediaries could effect purchases of securities, whether certificated or uncertificated.

The system of uncertificated securities provided for by the 1978 amendments was not widely adopted by the marketplace. (One notable exception is the mutual fund market. Transfers of mutual fund shares, however, are uncommon; changes in mutual fund share ownership occur through redemption and new issuance.) Instead, an extensive pattern of security immobilization and indirect holding has developed. Under this pattern, physical certificates are still issued but tend not to be in the hands of the ultimate beneficial owners. The securities are registered in the name of, and immobilized with, clearing corporations such as The Depository Trust Company (for most publicly traded corporate equity securities, corporate debt securities, and municipal debt securities), Participants Trust Company (for certain mortgage-backed securities), and other depositories that hold securities for the benefit of their participants. (For technical reasons, the securities are actually registered in the name of a nominee of the clearing corporation. The nominee of The Depository Trust Company ("DTC") is Cede & Co., and that of Participants Trust Company is MBSCC & Co.). The certificates are often in "jumbo" form (e.g., evidencing 10,000 or more shares of common stock or \$100,000,000 of debt with a single certificate). The depository's books indicate the ownership interests of the banks or brokers that are its members, and the records of those intermediaries, in turn indicate the ownership interests of their customers, i.e., the actual investors and beneficial owners. The identities of the latter need not be, and generally are not, known to the issuer.

Besides failing to account for important realities of the system that it governed, the 1978 version of Article 8 also carried forward certain rules that were undesirable from the standpoint of systemic efficiency. To take one important example, a person asserting an adverse claim retained the right to recover securities (or their value) from any transferee other than a "bona fide purchaser," yet this status was impossible to attain for purchasers holding through any intermediary other than a clearing corporation. Prior .. 8-315, 8-313(2).

This specter of recapture meant that the vast majority of securities transactions took place subject to doubt (albeit somewhat theoretical doubt) about their finality.

#### B. Principal Objectives of the 1994 Revision

The 1994 revisions to Article 8, and to related portions of Article 9, represent an effort to overhaul commercial law rules for securities transfers so as to reflect the realities of modern securities holding and trading practices. Changes to the 1978 version of Article 8 had been urged

for several years, and the 1994 version is considered to represent a major advance in commercial law, particularly in addressing the realities of indirect holding, and also in addressing global trading.

One of the most important objectives of the 1994 version of Article 8 (generally referred to in this book simply as "Article 8") was to promote finality of transactions and thereby allow securities transfers to be processed without disruption or delay. This was achieved by limiting the exposure of transferees to adverse claims, virtually eliminating doubts about finality by providing that investors holding through intermediaries do not have an interest in any particular security (or even any particular fungible bulk of securities) which can be traced and recaptured from all but a limited class of purchasers. A second principal objective was to build enough flexibility into the system to prevent it from quickly becoming obsolete due to future innovations in securities holding patterns (as had happened to the 1978 version) or investment assets. This was achieved by providing that the rules of the indirect holding system apply to any "financial asset" (a broad term discussed in detail in Chapter 4.A), by introducing some party autonomy into the definition of "security" (discussed immediately infra), and by structuring the rights of investors holding through intermediaries so as to be dependent primarily on those intermediaries, rather than on third parties. A third significant goal was to provide clear and logical choice of law rules for both sales and secured transactions so as not to inhibit globalization of securities transactions. Choice of law is discussed in Chapter 6.

### C. Scope of Article 8

As noted above, Article 8 provides the commercial law rules for the acquisition, holding, and transfer of interests in securities and certain other investment property. Central to the scope of Article 8 are its definitions of security, financial asset, and security entitlement. The definition of security contained in 8-102 (with help from 8-103) has little to do with the definition of security that has developed for purposes of the federal securities laws. Article 8's definition is intended to cover assets that one would normally expect to be bought and sold as securities in today's marketplace, and has essentially four components.

First, the asset must be either an obligation of an issuer (such as a bond, note, or other debt), or a share, participation, or other interest in the issuer or in the issuer's property (such as a share of stock). Chapter 2 discusses Article 8's rules regarding the issuer's obligations to the owner of securities issued by it.

Second, the asset must take one of three forms. It may be in bearer form, i.e., evidenced by a physical certificate entitling the holder (the bearer) to the rights that the asset is intended to represent. Alternatively, it may be in registered form, i.e., evidenced by a physical certificate entitling the person registered as the owner on the books of the issuer to the rights the asset is intended to represent. (It may not be "order" paper, i.e., an obligation payable "to the order" of a payee, such as a check or commercial paper.) Finally, a security may be uncertificated, i.e., evidenced only by an entry in the books of the issuer, as envisioned by the 1978 version of Article 8. (All uncertificated securities are, of course, registered.)

Third, the asset must be one of a class or series or, by its terms, be divisible into a class or series of shares, participations interests, or obligations. **This requirement assists in distinguishing securities from ordinary negotiable instruments.** This provision does not require that there be more than one item in the class or series; it is also satisfied by, for example, a single certificate representing all of the outstanding shares of stock of a closely held issuer, so long as it is by its terms divisible. Thus a jumbo, i.e., very large, certificate would satisfy this component, but a "global" (i.e., one that evidences the entire class or series and that is not divisible) certificate would not.

Fourth and finally, the asset must function like a security. It must ordinarily be, or be of a type that is, dealt in or traded on a securities exchange or securities market. Alternatively, this fourth component is satisfied if the asset constitutes a "medium for investment" and by its terms expressly provides that it is a security governed by Article 8. Thus, the issuer of a medium for investment (such as a partnership or a limited liability company) can "opt in" to the full range of Article 8's coverage of securities. In addition to securities, Article 8 covers a broader array of financial assets, but to a more limited extent. As more fully discussed in Chapter 4.A, "financial asset" is defined to include securities, other obligations or interests which are (or are of a type)

dealt in or traded on financial markets or considered a medium for investment, and any property held in a securities account which the securities intermediary has agreed to treat as a financial asset. Article 8 applies to financial assets that are not securities only insofar as they are held in a "securities account," i.e., in the indirect holding system discussed below. Expressed another way, the only interest in nonsecurities financial assets to which Article 8 applies is a "security entitlement" to them: a bundle of rights which is part property interest in assets held through, and part in personam claim against, a securities intermediary. (This concept, which is crucial to the statute's treatment of securities, too, is discussed in detail in Chapter 4.) By contrast, Article 8 covers securities in a relatively expansive manner, providing not only for the indirect holding system but also for the rights and obligations of issuers, purchasers, transferors, and others in the direct holding system.

The importance of this distinction between securities and other financial assets is highlighted by . 8-103, which is devoted to classifying certain otherwise potentially difficult cases one way or the other. This section makes explicit that shares of stock in any corporation, even a closely held one, are securities, as are similar equity interests issued by business trusts, joint stock companies, and similar entities, whether or not the particular issue is dealt in or traded on a securities exchange or market. By contrast, an interest in a partnership or limited liability company is not a security, unless it is so dealt in or traded, or unless the opt-in provision discussed above applies. **If a partnership or LLC interest is not a security, it is nonetheless a financial asset if it is held in a securities account.**

#### D. Article 8's Division into Rules for the Direct and Indirect Holding Systems

Under Article 8, an essential distinction is whether one has a "direct" relationship with the issuer, as when one is a record owner or the holder of a bearer security, or an "indirect" relationship with the issuer, as when one holds the investment through one or more intermediaries. Because the differences between direct and indirect holding are so significant, Article 8 treats them as separate systems requiring different legal concepts.

The system in which investors have a direct relationship with the issuer is known as the direct holding system. The rules for this system apply only to securities, not to other financial assets. In the direct holding system, securities intermediaries and securities accounts are not involved;

instead, each investor is registered as the owner on the books of the issuer (which are often maintained by a transfer agent).

The system in which investors hold interests in securities or other financial assets through intermediaries in securities accounts is known as the indirect holding system. The indirect holding system is not entirely independent of the direct holding system: in the case of securities, the entity at the top of the chain of indirect ownership has a direct holding system relationship with the issuer. This linkage between the two systems, as well as some typical relationships within the indirect holding system.

For example, if the financial assets in question are shares of stock in Computer Corporation, Investor #1 has a security entitlement to those shares credited to its securities account maintained with Broker #1. Broker #1, in turn, has the same relationship with DTC. And, finally, DTC (or, more precisely, its nominee, Cede & Co.) is the registered owner of the shares on the books of Computer Corporation. The same analysis applies whether the Computer Corporation shares registered to DTC are certificated or uncertificated: Article 8's classification of ownership depends more fundamentally on how securities are held than on how they are evidenced. The direct holding system is the subject of Chapters 2 and 3. The indirect holding system is the subject of Chapter 4.

#### E. Regulations Concerning Federal Book-Entry Securities

Recent regulations issued by the United States Treasury parallel (and, in certain cases, incorporate) the 1994 version of Article 8. These regulations govern many aspects of transactions involving securities issued by the United States Treasury and maintained in the Treasury/Reserve Automated Debt Entry System ("TRADES"), which utilizes the commercial book-entry system operated by the federal reserve banks. Nearly identical regulations have also been issued by the various other government-sponsored entities that maintain securities in the federal reserve banks' book-entry system, such as the Federal National Mortgage Association (known as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (known as "Freddie Mac").

Persons holding Treasury securities in TRADES do so through a tiered system of securities accounts. The Treasury, acting through its fiscal agents, the federal reserve banks, recognizes the

identity only of participants, i.e., entities maintaining direct securities account relationships in their name with a federal reserve bank. Persons that are not participants can hold beneficial interests in Treasury securities through one or more securities intermediaries and generally may exercise their rights only through those entities.

The TRADES regulations, which are codified at 31 C.F.R. Part 357, follow a bifurcated structure, applying federal substantive law to certain aspects of transactions at the federal reserve bank level and deferring to other applicable law in other instances. In a significant change from prior regulations, the TRADES regulations have **clear choice of law rules paralleling the new ones of Article 8. They also provide that, for certain purposes, if the jurisdiction to which such rules refer is a state (defined to include the District of Columbia and U.S. territories and possessions) that has not adopted the 1994 version of Article 8, the TRADES regulations will apply the law of such state "as though" the state had adopted it. This incorporation of Article 8 is designed to ensure uniformity in the law applied to transactions in Treasury securities where federal substantive law does not otherwise govern.**

Persons may also hold interests in Treasury securities through "Treasury Direct." In this system, a beneficial owner maintains a direct account relationship with the Treasury. No secondary market trading or pledging of book-entry securities held through Treasury Direct may be effected under current regulations, however. These regulations, which are also codified at 31 C.F.R. Part 357, do not incorporate Article 8 in any way.



## ***VI. Licenses and Privileges***

A **license** as defined in black's law dictionary is: Certificate or the document itself which gives permission. Authority or liberty given to do or forbear any act. Permission to do a particular thing or to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. Privilege from state or sovereign. The words "admit" and "license" as used in statute providing that power to admit and license persons to practice as attorneys is vested exclusively in the Supreme Court are inseparable and refer to the same thing.

Now in Bouvier's dictionary it reads:

**LICENSE**, contracts. A right given by some competent authority to do an act, which without such authority would be illegal. The instrument or writing which secures this right, is also called a license. Vide Ayl. Parerg, 353; 15 Vin. Ab. 92; Ang. Wat. Co. 61, 85. 2. A license is express or implied. An express license is one which in direct terms authorizes the performance of a certain act;

**Constitutional Law and Contract Law** as defined in Black's law is: A permission, by a competent authority to do some act which without such authorization would be illegal, or would be a trespass or a tort. Also the written evidence of permission.

A "license" is not a contract between the state and the licensee, but is a mere personal permit. Neither is it a property or a property right.

**Marriage License** in Black's law dictionary reads: A license or permission granted by public authority to persons who intend to intermarry... By statute in some jurisdictions, it is made an essential prerequisite to the lawful solemnization of the marriage.

**Privilege** in Black's law reads: A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens.

**Civil Law** in black's it reads: A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors.

**Privileges and Immunities** in Black's law reads: Within the meaning of the 14<sup>th</sup> amendment of the United States constitution, such privileges as are fundamental, which belong to the citizens of all free governments and which have at all times been enjoyed by citizens of the United States.

Now the definition of Privilege from Bouvier's:

**PRIVILEGE**, civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors.

Now please do not forget the definition of contract and the power of its association between parties. Again from Bouvier's we find a contract to read:

**CONTRACT**. This term, in its more extensive sense, includes every description of agreement, or obligation, whereby one party becomes bound to another to pay a sum of money, or to do or omit to do a certain act; or, a contract is an act which contains a perfect obligation. In its more confined sense, it is an agreement between two or more persons, concerning something to be done, whereby both parties are bound to each other, \*or one is bound to the other.

Now that you have some idea of what licenses, privileges and contracts are let's look at Bouvier's to see what Voluntary reads:

**VOLUNTARY**. Willingly; done with one's consent; negligently. To render an act criminal or tortious it must be voluntary. And if he commit an injury to the person or property of another, he is not liable for damages, unless the act has been voluntary or through negligence, as when a collision takes place between two ships without any fault in either.

This next definition should really be a helpful one for most folks while understanding the nature and cause of law or contracts. Please try to understand how important this word is with law and contracts.

**MISTAKE**, contracts. An error committed in relation to some matter of fact affecting the rights of one of the parties to a contract.

2. Mistakes in making a contract are distinguished ordinarily into, first, mistakes as to the motive; secondly, mistakes as to the person, with whom the contract is made; thirdly, as to the subject matter of the contract; and, lastly, mistakes of fact and of law. See Story, Eq. Jur. Sec. 110; Bouv. Inst. Index, h.t.; Ignorance; Motive.

3. In general, courts of equity will correct and rectify all mistakes in deeds and contracts founded on good consideration. 1 Ves. 317; 2 Atk. 203; Mitf. Pl. 116; 4 Vin. Ab. 277; 13 Vin. Ab. 41; 18 E. Com. Law Repts. 14; 8 Com. Digest, 75; Madd. Ch. Prac. Index, h.t.; 1 Story on Eq. ch. 5, p. 121; Jeremy's Eq. Jurisd. B. 3, part 2, p. 358. See article Surprise.

4. As to mistakes in the names of legatees, see 1 Rop. Leg. 131; Domat, l. 4, t. 2, s. 1, n. 22. As to mistakes made in practice, and as to the propriety or impropriety of taking advantage of them, see Chitt. Pr. Index, h.t. As to mistakes of law in relation to contracts, see 23 Am. Jur. 146 to 166.

Now for the liability part of these licenses and privileges. Let's go to Bouvier's Dictionary and we see that liability reads:

**LIABILITY.** Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

Licenses are grants and privileges and because they are contracts they are consensual in nature. Ie: they are voluntary.

Let's start with the Birth records. In order for you to understand the birth records and vital statistics agencies you must first learn what their own regulations and definitions mean. Please visit your state Regulator for information pertaining to a state birth document. This definition comes from Mississippi and it reads:

"Live Birth" Means the complete expulsion or extraction from its mother of a **product** of human conception,"

What is a human?

Merriam-Webster says that the adjective 'human' is of **relating to, being, or characteristic of humans; having human forms or attributes**

However let me take you to black's law dictionary and read the definition of man as used in law: "a vassel; **a tenant** or feudatory. The Anglo-Saxon relation of lord and man was originally purely personal and founded on mutual contract."

Now for the Black's law definition of "Husband and wife": "the legal existence of a wife is incorporated with that of her husband".

Now with this in mind remember the words, product, relating to or having a characteristic of a tenant with his wife who is incorporated with him. Wow this really is sounding like we have been used for commercial gains or resources as well as being tricked into contracting everywhere we turn. Lets continue with more on state or governmental contracts, I mean identifications.

**<http://www.ssa.gov/pubs/10023.html#must>**

Must my child have a Social Security number?

**No.** But it is a very good idea to apply for a number right after your baby is born. Getting a **Social Security number for your newborn is voluntary.** You should apply for your baby's number before the child is 1 year old. If you do not, it may take up to 12 weeks longer, because we will contact the state office that issued the birth record to verify the record. We do this to prevent people from using fraudulent birth records to obtain Social Security numbers to establish false identities.

**<http://www.sospublius.org/help/howtoregister.asp>**

To register to vote in Michigan you must be:

a U.S. citizen

at least 18 years of age by election day  
a resident of Michigan and the city or township where you are applying to register  
to vote

Where: In Michigan, your voter registration for all federal, state, and local elections is maintained by your local city or township clerk. You should register to vote at your clerk's office. Be sure to read the information below and then use the link at the bottom of the page to locate your clerk.

Voters may also register to vote by mail, at your county clerk's office or by visiting any Secretary of State branch office. In addition, specified agencies providing services through the Family Independence Agency, the Department of Community Health, and the Department of Career Development offer voter registration services to their clients. Military recruitment centers also provide voter registration services.

Let's look at a couple more court cases to see what they said again.

The court below held and the Board contends that the appellant did not become a citizen of Maryland, under the provisions of the Maryland Constitution, until he became a citizen of the United States, and is therefore ineligible to be Sheriff of Baltimore City because he was not a United States citizen at least five years preceding the election. We disagree.

Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state. United States v. Cruikshank, 92 U.S. 542, 549 (1875); Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 73-74 (1873); and see Short v. State, 80 Md. 392, 401-02, 31 Atl. 322 (1895). See also Spear, State Citizenship, 16 Albany L.J. 24 (1877). Citizenship of the United States is defined by the Fourteenth Amendment and federal statutes, but the requirements for citizenship of a state generally depend not upon definition but the constitutional or statutory context in which the term is used. Risewick v. Davis, 19 Md. 82, 93 (1862); Halaby v. Board of Directors of University of Cincinnati, 162 Ohio St. 290, 293, 123 N. E. 2d 3 (1954) and authorities therein cited.

LORELYN PENERO MILLER v. MADELEINE K. ALBRIGHT [April 22, 1998]

Justice Stevens announced the judgment of the Court and delivered an opinion, in which The Chief Justice joined. **There are “two sources of citizenship, and two only: birth and naturalization.”** *United States v. Wong Kim Ark*, 169 U.S. 649, 702 (1898). Within the former category, the Fourteenth Amendment of the Constitution guarantees that every person “born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization.” 169 U.S., at 702. **Persons not born in the United States acquire citizenship by birth only as provided by Acts of Congress. *Id.*, at 703.**

### **COURT CASE REFERRING TO MARRIAGE LICENSE**

**NO. 5-97-0108 IN THE APPELLATE COURT OF ILLINOIS FIFTH DISTRICT ---  
CAROLYN A. WEST and JOHN W. WEST,**

Petitioners and Cross-Appellees v. GINGER WEST, Respondent and Cross-Appellant. Appeal from the **Circuit Court of Jefferson County. No. 93-F-92** Honorable Terry H. Gamber, Judge, presiding.

JUSTICE MAAG delivered the opinion of the court: This action was brought in April of 1993 by Carolyn and John West (grandparents) to obtain visitation rights with their grandson, Jacob Dean West. Jacob was born January 27, 1992. He is the biological son of Ginger West and Gregory West, Carolyn and John's deceased son. In June of 1993, when Jacob was approximately 17 months old, the grandparents were granted accelerating visitation privileges.

The issue presented for review on appeal is whether section 607(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/607(b) (West 1996)), insofar as it pertains to grandparental visitation privileges, is unconstitutional as violative of the fundamental liberty rights of parents to the care and custody of their children, which are guaranteed to them by the fourteenth amendment to the United States Constitution and article 1, section 2, of the Constitution of the State of Illinois. We begin our analysis of this issue with the presumption that the challenged provision of the visitation statute is constitutional. See *Tully v. Edgar*, 171 Ill. 2d 297, 304, 664 N.E.2d 43, 47 (1996). The court has a duty to construe enactments so as to sustain their constitutionality and validity, if reasonably possible. *People v. Warren*, 173 Ill. 2d 348, 355,

671 N.E.2d 700, 705 (1996). Keeping these principles in mind, we now proceed with our analysis. Ginger begins her argument with a discussion of the long-recognized constitutionally protected interest of parents to raise their children without undue State influence. See *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 626 (1923); *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35, 69 L. Ed. 1070, 45 S. Ct. 571-73 (1925); *Prince v. Massachusetts*, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438, 442 (1944); *Wisconsin v. Yoder*, 406 U.S. 205, 235, 32 L. Ed. 2d 15, 92 S. Ct. 1526, 1543 (1972); *Santosky v. Kramer*, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388, 1394 (1982).

However, this constitutionally protected parental interest is not wholly without limit or beyond regulation. *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438, 442 (1944). **"[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."** *Prince*, 321 U.S. at 167, 88 L. Ed. 645, 64 S. Ct. at 442. **In fact, the entire familial relationship involves the State. When two people decide to get married, they are required to first procure a license from the State. If they have children of this marriage, they are required by the State to submit their children to certain things, such as school attendance and vaccinations.** Furthermore, if at some time in the future the couple decides the marriage is not working, they must petition the State for a divorce. **Marriage is a three-party contract between the man, the woman, and the State.** *Linneman v. Linneman*, 1 Ill. App. 2d 48, 50, 116 N.E.2d 182, 183 (1953), citing *Van Koten v. Van Koten*, 323 Ill. 323, 326, 154 N.E. 146 (1926). **The State represents the public interest in the institution of marriage.** *Linneman*, 1 Ill. App. 2d at 50, 116 N.E.2d at 183. **This public interest is what allows the State to intervene in certain situations to protect the interests of members of the family. The State is like a silent partner in the family who is not active in the everyday running of the family but becomes active and exercises its power and authority only when necessary to protect some important interest of family life.**

Taking all of this into consideration, the question no longer is whether the State has an interest or place in disputes such as the one at bar, but it becomes a question of timing and necessity. Has the State intervened too early or perhaps intervened where no intervention was warranted? This

question then directs our discussion to an analysis of the provision of the Act that allows the challenged State intervention (750 ILCS 5/607(b) (West 1996)).

“A statute will be construed as changing common law only to the extent that the terms thereof warrant, or as necessarily implied from what is expressed.” Hawkins v. Hawkins, 102 Ill. App. 3d 1037, 1039, 430 N.E.2d 652, 654 (1981), citing Sternberg Dredging Co. v. Sternberg's Estate, 10 Ill. 2d 328, 140 N.E.2d 125 (1957); Acme Fireworks Corp v. Bibb, 6 Ill. 2d 112, 126 N.E.2d 688 (1955); People v. Monoson, 75 Ill. App. 3d 1, 393 N.E.2d 1239 (1979). "Repeal of the common law by implication is not favored." Hawkins, 102 Ill. App. 3d at 1039, 430 N.E.2d at 654. Rather, we believe that the legislature was codifying the common law and simultaneously expanding grandparental visitation. "[This amendment] comes as a `promise of relief to some who feel the state has overstepped its purview by meddling with what they call a sacred right for parents: to decide who[m] their children should have contact with." 25 Fam. L.Q. at 75, quoting Kendall, Grandparents' Rights Challenged, Chi. Trib., June 4, 1990, 2, at 1. Only in the case of a disrupted family does the State seek to intervene, and only then to protect the interests of those who cannot protect their own interests. This is the same way the issue of grandparental visitation was handled in the courts before the enactment of the visitation statute.

We realize that the challenged statute and the common law it codifies allow the State to act upon a constitutionally recognized fundamental right of parents. **Where a statute infringes upon a fundamental constitutional right, that statute may be upheld only if a compelling State interest exists to achieve a stated goal.** Tully v. Edgar, 171 Ill. 2d 297, 304-05, 664 N.E.2d 43, 47 (1996). The least restrictive means necessary must be used to attain the goal. Tully, 171 Ill. 2d at 305, 664 N.E.2d at 47.

Now read this section in the Bar news for the State of Michigan and use your imagination regarding Deceptive Trade Practices vs agency policies or rules.  
[http://www.michigan.gov/documents/barnews00\\_25346\\_7.pdf](http://www.michigan.gov/documents/barnews00_25346_7.pdf)

**Vol. 20, Issue 1 Candice S. Miller, Secretary of State**



In this issue The Bureau of Automotive Regulation’s legal advisors recently concluded that language which limits the consumer’s right to remedies prescribed by law is considered an unfair and deceptive practice under Michigan law.

Using invoices which contain language such as “Disputes arising out of alleged breach of the repair order shall be settled by binding arbitration pursuant to the rules of the American Arbitration Association” or similar terminology, as well as “each party shall bear its own costs, including legal fees” is an unfair and deceptive practice. Such arbitration language violates the Motor Vehicle Service and Repair Act and Administrative Rules on several grounds. Section 36 (MCL 257.1336) allows a customer to recover damages plus attorney fees and costs. Rule 31(1)(a) prohibits contracts which use a waiver to circumvent or evade the Motor Vehicle Service and Repair Act. Rule 31(2)(c) prohibits repair facilities from entering “into a contract which attempts to abrogate, disclaim, or disallow legal rights, obligations, or remedies of a customer.” And Rule 31(2)(f) prohibits any “attempt to avoid or evade Invoice language may be deceptive practice the law through a contract or any provision thereof.” If your invoices contain such language (on the front or back), you should strike out the language or replace the invoices to avoid the issuance of violation notices. Most invoice suppliers have been notified that this type of language is illegal and have made modifications.

I would like to finish this chapter off with an exercise for all to take part in. Please take a peek at: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1> This is NARA’s website for the Code of Federal Regulations. Please attempt to find Title 2 of the Code of Federal Regulations. If you have noticed it is not there. As a matter of fact there isn’t even a title for the section so you can not even find out what the section refers to. All it states is: “Reserved” Well upon requesting specifics from the NARA FOIA department a Beta Test link was sent and this is what the link and content are:

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title02/2tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title02/2tab_02.tpl)

<i>Title</i>	<i>Volume</i>	<i>Chapter</i>	<i>Browse Parts</i>	<i>Regulatory Entity</i>
<b>Title 2 Grants and Agreements</b>	1	<b>Subtitle A--Office of Management and Budget Guidance for Grants and Agreements</b>		
			1	

		I	100-199 [Reserved]	
		II	200-214 [Reserved]	Office of Management and Budget Circulars and Guidance
			215	
			216-219 [Reserved]	
<b>Subtitle B--Federal Agency Regulations for Grants and Agreements</b>				

Notice most is still reserved. The exercise is to find out as much as possible and try to gain a copy of the entire title of 2 Code of Federal Regulations. It seems funny that the very section that deals with Grants and Agreements are mostly “Reserved” from the public when it has to deal with the rules, regulations, and definitions of the very grants and agreements with the United States government. Let’s see some that is published.

**Title 2: Grants and Agreements**

**PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A**

**Subpart A—Introduction to Title 2 of the CFR**

**§ 1.105 Organization and subtitle content.**

- (a) This title is organized into two subtitles.
- (b) The OMB guidance described in §1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance and not regulation.
- (c) Each Federal agency that publishes regulations implementing the OMB guidance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory (Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the guidance).

Wonder why it is the regulations governing the agencies within, is not published?

**§ 1.210 Applicability to Federal agencies and others.**

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect others through each Federal agency's implementation of the guidance, portions of which may apply to—

(1) The agency's awarding or administering officials;

(2) Non-Federal entities that receive or apply for the agency's grants or agreements or receive subawards under those grants or agreements; or

**(3) Any other entities involved in agency transactions subject to the guidance in this chapter.**

### **§ 1.305 Federal agency responsibilities.**

The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle.

(b) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance.

(c) Performing other functions specified in this subtitle.

### **§ 215.2 Definitions.**

(e) Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

### **§ 215.42 Codes of conduct.**

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. **No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved.** Such a conflict

would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

### **§ 215.61 Termination.**

(a) **Awards may be terminated in whole** or in part only if paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

**(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date,** and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §215.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

So now you can see that the very grants and agreements section of the CFR is paramount, yet mostly hidden, to research. If you do not believe this please take a look at how the USC and the CFR is set up to begin with.

The United States Code is the codification by subject matter of the general and permanent laws of the United States **based on what is printed in the Statutes at Large**. It is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives.

Since 1926, the United States Code has been published every six years. In between editions, annual cumulative supplements are published in order to present the most current information. Documents are available only as ASCII text files.

GPO Access contains the 2000 and 1994 editions of the U.S. Code, plus annual supplements. At this time, the Statutes at Large is not available on GPO Access.

When a section is affected by a law passed after a supplement's revision date, the header for that section includes a note that identifies the public law affecting it. In order to find the updated information, you must search the public laws databases for the referenced public law number.

The U.S. Code on GPO Access is the official version of the Code, however, two unofficial editions are available. These are the U.S.C.A.(U.S. Code Annotated) and the U.S.C.S. (U.S. Code Service). The U.S.C.A. and U.S.C.S. contain everything that is printed in the official U.S. Code but also include annotations to case law relevant to the particular statute. While these unofficial versions may be more current, they are not official and not available from the U.S. Government Printing Office.

NOTE: Of the 50 titles, only 23 have been enacted into positive (statutory) law. These titles are 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 44, 46, and 49. When a title of the Code was enacted into positive law, the text of the title became legal evidence of the law. **Titles that have not been enacted into positive law are only prima facie evidence of the law. In that case, the Statutes at Large still govern.**

The U.S. Code does not include **regulations** issued by executive branch agencies, decisions of the Federal courts, treaties, or laws enacted by State or local governments. **Regulations issued by executive branch agencies are available in the Code of Federal Regulations. Proposed and recently adopted regulations may be found in the Federal Register.**

To view the United States Code: <http://www.gpoaccess.gov/uscode/browse.html>  
[our note, look at the change in the current Title Name of Title 27]

A service of the U.S. Government Printing Office. Last updated: September 27, 2003  
Page Name: <http://www.gpoaccess.gov/uscode/about.html>

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To locate in U.S. Code, look for identical section number in Title 26, Internal Revenue Code. P.L. 99-514, 2(a), provides that the Internal Revenue Title enacted August 14, 1954, may be cited as the "Internal Revenue Code of 1986" and 2(b) provides, except when inappropriate, any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of the Internal Revenue Code of 1954.

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Codification Legislation Office of the Law Revision Counsel

What Is Positive Law Codification?

Positive law codification is the process of preparing and enacting, one title at a time, a revision and restatement of the general and permanent laws of the United States.

Because many of the general and permanent laws that are required to be incorporated into the United States Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the

Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary.

**Positive law codification bills prepared by the Office do not change the meaning or legal effect of a statute being revised and restated.** Rather, the purpose is to remove ambiguities, contradictions, and other imperfections from United States Code Classification Tables Office of the Law Revision Counsel

<http://uscode.house.gov/usctt.htm>

These tables show where recently enacted laws will appear in the United States Code and which sections of the Code have been amended by those laws. The tables sorted in Public Law order may be used to identify the sections of the Code affected by a particular law. The tables sorted in Code order may be used to determine whether a particular section of the Code has recently been amended. The tables only include those provisions of law that have been classified to the Code. The text of recently enacted laws may be found through the Library of Congress Thomas web site.

## VII. UCC and Banking

Most folks will agree that banking transactions such as a loan would be covered under Article 3 entitled Negotiable Instruments, however by doing a little more investigation you may find differently. When reading any section of law it is most important to read the applicability, subject matter, or in easier terms the topics the specific sections covers to begin with. When you look in Article 3 itself you will find that at Section 3-102 it reads:

### § 3-102. SUBJECT MATTER.

- (a) This Article applies to negotiable instruments . It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.
- (b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.
- (c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

Now this speaks about Articles 4, 8, and 9. Now in Chapter V that Article 9 is inapplicable with these items as well. (see 9-109 (4-11)) So this leaves Articles 4 and 8.

Now again lets go to Article 4 and see what it states about what Article 4 applies to.

### § 4-102. APPLICABILITY.

- (a) To the extent that items within this Article (4-104) are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.
- (b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Now we can see that we should go to article 8 for a clear understanding of what it covers.



If you go into Article 8 you will see that 8-102 is definitions and no where else can you find a title section caption of neither Subject Matter nor Applicability. This tells me that we must now be at the root of the topic because there are no other references nor statements stating if, or go to, or to the extent in...., or except as provided in.

So now we see that Article 8 is the key lets go back to the document itself again. The loan or note that you signed with the bank. In doing this, this will take us back to Article 3 to find out what exactly Article 3 states it is and what exactly happened. First lets find out what the section tells us is a negotiable instrument to begin with.

### **§ 3-104. NEGOTIABLE INSTRUMENT.**

**(a) Except as provided in subsections (c) and (d),** "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain

(i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument .

**(c) An order** that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check .

**(d) A promise or order other than a check is not an instrument** if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect **that the promise or order is not negotiable or is not an instrument governed by this Article.**

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand **and drawn on a bank** or (ii) a cashier's check or teller's check . An instrument may be a check even though it is described on its face by another term, such as "money order."

See this is actually a draft. It does order payment. You are ordering the bank to pay based upon your promise. Therefore it falls under the category of draft ie NOT a negotiable instrument. Now lets make sure of this. In order to do so we need to look at the issue and issuer section to find out who really issued this loan or note.

### **§ 3-105. ISSUE OF INSTRUMENT.**

(a) "**Issue**" means the first delivery of an instrument by the maker or drawer, whether to a holder or non-holder, for the purpose of giving rights on the instrument to any person.

### **§ 3-103. DEFINITIONS.**

(a) In this Article:

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "**Drawer**" means a person who **signs or is identified in a draft as a person ordering payment.**

(4) [reserved] (**This wonderful Good Faith Clause again Removed on Cornell online**)

(5) "**Maker**" means a person who signs or is identified in a note as a **person undertaking to pay.**

Well based on the above who ordered payment? If you think the bank ask yourself 1 question. Absent your signature what agreement is there? They can not order payment without YOU consenting to it. Also under maker it is much clearer by asking yourself who is the one paying? So this proves that YOU are the issuer and NOT the bank. This now makes a whole bunch more sense especially when the first couple chapters you learned that the DEBTOR moves rights and property not the Secured Party. Now you realize the bank tricked you into believing they issued

when in fact you did. If you still believe the bank loaned you their money and the bank issued the loan please cross reference with 12 USC Chapter 2 Subchapter 4 Section 83. For the root of this section please see Title 62 of the Revised Statutes and read Chapter 4 sometime.

Back to the UCC side of this. Now we see this is all about assets. Its not identified who's asset yet but it is definitely an asset. Now Article 3 took us to Article 4 and Article 4 takes us to 8 by their own admissions. If there is a conflict ...Now we need to go to Article 8 to find out who is entitled and who is not. First you need to see some definitions to see what Article 8 states these words mean in this Article.

### **§ 8-102. DEFINITIONS.**

1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security , means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement .

(3) "**Broker**" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(7) "**Entitlement holder**" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8-501(b)(2) or (3) , that person is the entitlement holder.

(9) "**Financial asset**," except as otherwise provided in Section 8-103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [reserved] [Here is that good faith clause again yet not on Cornell's web site.]

(15) "**Security**," except as otherwise provided in Section 8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(17) "**Security entitlement**" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

### **§ 8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.**

(d) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

### **§ 8-104. ACQUISITION OF SECURITY OR FINANCIAL ASSET OR INTEREST THEREIN.**

(a) A person acquires a security or an interest therein, under this Article, if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8-301 ; or

**(2) the person acquires a security entitlement to the security pursuant to Section 8-501 .**

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset. (see (a)(2))

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

Now for the entitlement itself. See in the definition of "Entitlement holder" it refers you to 8-105(b)2 or (3).

**§ 8-501. SECURITIES ACCOUNT; ACQUISITION OF SECURITY ENTITLEMENT FROM SECURITIES INTERMEDIARY.**

(a) "**Securities account**" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained **as entitled to exercise the rights that comprise the financial asset.**

**(b) Except as otherwise provided in subsections (d) and (e), a person acquires a security entitlement if a securities intermediary :**

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

**(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or**

**(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.**

(c) If a condition of subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset .

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as **holding the financial asset directly** rather than as having a security entitlement with respect to the financial asset.

(e) **Issuance of a security is not establishment of a security entitlement.**

Now for those who think the bank is the entitlement holder.

**§ 8-503. PROPERTY INTEREST OF ENTITLEMENT HOLDER IN FINANCIAL ASSET HELD BY SECURITIES INTERMEDIARY.**

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, **all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not**

property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8-511.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) **may be enforced against the securities intermediary only by exercise of the entitlement holder's rights** under Sections 8-505 through 8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) **may be enforced against a purchaser of the financial asset** or interest therein only if:

- (1) insolvency proceedings have been initiated by or against the securities intermediary ;
- (2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- (3) the securities intermediary violated its obligations under Section 8-504 by transferring the financial asset or interest therein to the purchaser; and
- (4) the purchaser is not protected under subsection (e).

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset , may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8-504.

Also find now that the Bank, securities intermediary, has duties with regard to the asset of another.

#### **§ 8-504. DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET.**

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, **a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).**

(c) A securities intermediary satisfies the duty in subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary **exercises due care in accordance with reasonable commercial standards to obtain and maintain** the financial asset .

Ye haw. Now I got it. The bank can not be an entitlement holder because all banks do is deal with OTHER'S assets. No matter if it is depositors, investors or even shareholders.

Now for the funniest part about finding this section. When I read this entire Article from the ABA book, A call was made to the Secretary of State UCC unit for Michigan and section 8-510 and 8-511 were asked for and requested sent by mail or fax. The UCC unit stated the sections below did not even exist. When an ABA book from the ABA was mentioned and the sections where there yet not on Michigan's website and asked for a copy again they put the manager on the phone and after a start over explanation to her she finally admitted the section does exist but is not published on the web.

Remember earlier the topics called attachment and priority from above? Well read this section from Article 8 now.

## **§ 8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER.**

(a) In a case not covered by the priority rules in Article 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement , whether framed in

conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. **Except as otherwise provided in subsection (d), purchasers who have control rank according to priority in time of:**

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under Section 8-106(d)(1); (See below for 8-106(d)(1))

**(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.**

#### **§8-106(d)(1)**

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder; or see **8-501(b)(2)(3)**

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder, or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

#### **§ 8-511. PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS.**

(a) Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of



the securities intermediary who has a security interest in that financial asset, **the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.**

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Now lets go back to Article 4 for a minute and see if 4 is the Article of authority hwat does it say regarding this transaction.

4-104 (8) "**Drawee**" means a person ordered in a draft to make payment.(This is YOU!!!)

#### **§ 4-208. PRESENTMENT WARRANTIES.**

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft **in good faith that:**

(1) the warrantor is, or was, at the time the warrantor transferred the draft , a person **entitled to enforce the draft** or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

**(2) the draft has not been altered;** and

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a **warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach.** The right of the

drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.(3-404 and 3-405 at bottom of section. Please read)

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment **in good faith** that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. **The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.**

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

**(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.**

#### **§ 4-209. ENCODING AND RETENTION WARRANTIES.**

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that

retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

### **§ 3-404. IMPOSTORS; FICTITIOUS PAYEES.**

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (Section 3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement :

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

**§ 3-405. EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE.**

(a) In this section:

(1) "**Employee**" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "**Fraudulent indorsement**" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "**Responsibility**" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith , pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or

(ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

## ***VIII. Patents and Trademarks***

### **Common law trade-names**

The common law trademark, trade-name, copyright topic is one that has obtained a wide variety of scrutiny as well as discredit. However before getting into any details please check the following and then read on in this chapter. Also make sure you really understand the Birth Certificate topic discussion in earlier chapters as well.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In re: WORLD AUXILIARY POWER COMPANY; In re: WORLD,  
AEROTECHNOLOGY CORPORATION; In re: AIR REFRIGERATION SYSTEMS,  
INC.,

Debtors,

AEROCON ENGINEERING, INC.,                      No. 00-16550

Appellant, D.C. No.

v.

CV-00-00571-WHA

SILICON VALLEY BANK; ADVANCED                      OPINION

AEROSPACE LLC; AIRWELD, INC.; MICHAEL GILSEN; MERRITT WIDEN;  
WORLD AUXILIARY POWER COMPANY; WORLD AEROTECHNOLOGY  
CORPORATION; AIR REFRIGERATION, INC.,

Appellees.

Appeal from the United States District Court for the Northern District of California,  
William H. Alsup, Distict Judge, Presiding, Argued and Submitted December 7, 2001--San  
Francisco, California

Filed September 11, 2002

Before: Melvin Brunetti, Andrew J. Kleinfeld and Sidney R. Thomas, Circuit Judges.

Opinion by Judge Kleinfeld

OPINION

KLEINFELD, Circuit Judge:

In this case we decide whether federal or state law governs priority of security interests in  
unregistered copyrights.

## FACTS

Basically, this is a bankruptcy contest over unregistered copyrights between a bank that got a security interest in the copyrights from the owners and perfected it under state law, and a company that bought the copyrights from the bankruptcy trustees after the copyright owners went bankrupt. These simple facts are all that matters to the outcome of this case, although the details are complex.

Three affiliated California corporations -- World Auxiliary Power, World Aerotechnology, and Air Refrigeration Systems -- designed and sold products for modifying airplanes. The FAA must approve modifications of civilian aircraft by issuing "Supplemental Type Certificates." The three companies owned copyrights in the drawings, technical manuals, blue-prints, and computer software used to make the modifications. Some of these copyrighted materials were attached to the Supplemental Type Certificates. The companies did not register their copyrights with the United States Copyright Office.

The companies got financing from Silicon Valley Bank, one of the appellees in this case. Two of the companies borrowed the money directly, the third guaranteed the loan. The security agreement, as is common, granted the bank a security interest in a broad array of presently owned and after-acquired collateral. The security agreement covered "all goods and equipment now owned or hereafter acquired," as well as inventory, contract rights, general intangibles, blueprints, drawings, computer programs, accounts receivable, patents, cash, bank deposits, and pretty much anything else the debtor owned or might be "hereafter acquired." The security agreement and financing statement also covered "[a]ll copyright rights, copyright applications, copyright registrations, and like protections in each work of authorship and derivative work thereof, whether published or unpublished, now owned or hereafter acquired."

The bank perfected its security interest in the collateral, including the copyrights, pursuant to California's version of Article 9 of the Uniform Commercial Code, by filing UCC-1 financing statements with the California Secretary of State. The bank also took possession of the Supplemental Type Certificates and the attached copyrighted materials. But the copyrights still

weren't registered with the United States Copyright Office, and the bank did not record any document showing the transfer of a security interest with the Copyright Office.

Subsequently, the three debtor companies filed simultaneous but separate bankruptcy proceedings. Their copyrights were among their major assets. Aerocon Engineering, one of their creditors (and the appellant in this case), wanted the copyrights. Aerocon was working on a venture with another company, Advanced Aerospace, and its President, Michael Gilson, and an officer and director, Merritt Widen (all appellees in this case), to engineer and sell aircraft modifications using the debtors' designs. Their prospective venture faced a problem: Silicon Valley Bank claimed a security interest in the copyrights. To solve this problem, Aerocon worked out a deal with Gilson, Widen, and a company named Erose Capital (not a party in this case) to buy the debtors' assets, including their copyrights, from the bankruptcy trustees along with the trustees' right to sue to avoid Silicon Valley Bank's security interest. Once Aerocon owned the copyrights, it planned to exercise the trustees' power to avoid Silicon Valley Bank's security interest so that the venture would own the copyrights free and clear.

## CONCLUSION

Regarding perfection and priority of security interests in unregistered copyrights, the California U.C.C. has not stepped back in deference to federal law, and federal law has not preempted the U.C.C. Silicon Valley Bank has a perfected security interest in the debtors' unregistered copyrights, and Aerocon, standing in the bankruptcy trustees' shoes, cannot prevail against it.



## *Bush disavows group, tactics*

A Republican legislator's group speculates on Democrat Janet Reno's drinking habits and sexual orientation.

By STEVE BOUSQUET, Times Staff Writer, © St. Petersburg Times, April 5, 2002

TALLAHASSEE -- A new group called Americans for Jeb Bush, headed by a Republican state legislator, proclaims itself dedicated to re-electing Florida's governor. But the governor calls it a scam and took extraordinary steps Thursday to put the group out of business.

In what may be a first in Florida politics, Bush will even seek to register three campaign slogans as trademarks, like Xerox, to stop unauthorized use of his name. The governor sent an e-mail to 20,000 supporters statewide urging them to avoid the group.

"We're going to do whatever we can to stop them," Bush said during a news conference. "This may sound ridiculous, but I'm going to trademark my name, so I can sue them. ... It's just one of these scams that misrepresents my views and attacks my opponent, and it's not my campaign. I've disavowed it completely."

Bush took dead aim at a group whose fundraising pitches speculate on Democrat Janet Reno's drinking habits and sexual orientation, and accuse her of going easy on drug dealers while she was state attorney in Miami-Dade in the 1970s and '80s. The letters were signed by the group's honorary chairman, state Rep. Gus Barreiro of Miami Beach.

Bush sent a strongly worded letter to Barreiro calling on him to repudiate the group. Barreiro refused but said he hopes to meet with Bush today.

"This organization was formed to deliver the strongest grass-roots organization ever seen in Dade County, and through our state," Barreiro said. "His name is not trademarked. Using his name in campaigns? I don't think you can stop that."

The group's existence and Bush's aggressive efforts to crush it underscore the high stakes in a governor's race that has drawn national attention because its central figures are the president's brother and the nation's first female attorney general.

Although he consistently leads every poll, including one taken two weeks ago for the St. Petersburg Times, Bush appears worried about a possible backlash against such tactics by moderate voters, who can be decisive in a competitive race.

Ben Ginsberg, a Washington lawyer and outside counsel to the campaign, said he would file trademark applications to protect three campaign slogans: "Bush-Brogan 2002," "Jeb Bush for Governor" and "Jeb!"

Ginsberg is no stranger to Florida politics: He helped shape George W. Bush's Florida legal strategy in the weeks after the 2000 presidential election, and advises Florida Republicans on redistricting .

Thursday's filing was done to stop the unauthorized use of Bush's name under federal trademark laws, Ginsberg said. The use of a trademarked name for commercial purposes is "outside of First Amendment protection," he said. A proper name cannot be registered, but a name's commercial use can be restricted, Ginsberg said.

"These are gutter tactics of misuse of a name, as well as personal innuendo against people who are running for office, essentially by people who are just trying to make money off the governor's name," Ginsberg said.

Barreiro said he is not being paid. "This is not about money," he said. But he said the first fundraising letter, dated March 22, brought in \$75,000 in less than three weeks.

The results are so promising, Barreiro said, he hopes to use the fundraising base to help fellow Miami-Dade lawmaker, Republican Rep. Gaston Cantens, in his campaign to be House speaker. Americans for Jeb Bush, based in Miami, is backed partly by Mark Goodrich, a conservative political activist and fundraiser who worked on Rick Lazio's unsuccessful 2000 U.S. Senate campaign against Hillary Rodham Clinton.

The group's Web site resembles a campaign operation, with a logo of the U.S. flag, a portrait of the smiling Bush family, and a link to the official Bush-Brogan site.

The group's fundraising letter was upfront about its main message: "Stop Janet Reno and re-elect Jeb." Attached was a reprint of an article in Insight magazine, which is affiliated with the Washington Times and owned by the Rev. Sun Myung Moon's Unification Church. Also included: a photo of former President Bill Clinton and his dog with Reno's face superimposed on the dog's head.

Nothing in Florida law prevents such third-party groups from making expenditures on a candidate's behalf, as long as they register as political action committees and disclose contributions and expenses.

Bush's campaign sent a copy of the Barreiro letter to the Reno campaign.

"Janet Reno will not engage in personal attacks and she will not support organizations that engage in personal, spiteful attacks," said Nicole Harburger, a Reno campaign spokeswoman. "Will there be a healthy debate on the issues? Yes."

Before we dive right into this I would like to also bring your attention to what the law librarian at Ferris State University has to say about the "Common Law Tradename:

<http://www.ferris.edu/library/patent/common.html>

Patent and Trademark Depository Library

Common Law

Common law benefits include:

Rights accrue from use of the mark in connection with the goods/services.

No paperwork or fees.

Common law drawbacks include:

The mark lives and dies with the trademark owner/user.

Protection is limited to a geographical area of use.

Little notice is provided to third parties.

The user must prove priority over others.

Generally the marks can only be enforced in state courts.

Compiled by: *Ray Dickinson, Librarian*

Last Update: *January 28, 2002*

Now a piece from bitlaw:

**The term "common law"** indicates that the trademark rights that are developed through use are not governed by statute. Instead, common law trademark rights have been developed under a judicially created scheme of rights governed by state law. Federal registration, a system created by federal statute, is not required to establish common law rights in a mark, nor is it required to begin use of a mark. However, federal registration, if available, is almost always recommended

and gives a trademark owner substantial additional rights not available under common law. See the BitLaw discussion of federal registration for more information.

**Common law trademark rights are limited** to the geographic area in which the mark is used. Thus, if a coffee blend is sold under the name BLASTER in California only, the trademark rights to that name exist only in California. If another coffee retailer begins to market a different blend in New York under the same name (assuming they had no knowledge of the California company), then there would be no trademark infringement. However, if the New York company attempted to sell their coffee blend nation-wide, they would discover that the California company's common law rights to the mark would prevent them from entering the California market.

**Since no registration is required** in order to establish common law rights to a trademark, it can be difficult to discover whether anyone has trademark rights in a particular mark. This is the legal background for the difficulties and expenses involved in trademark clearance searches. If registration were required for trademark rights, clearance searches would only need to examine trademark registers. Under U.S. law, however, an attempt must be made to discover these common law rights.

## **The Common Law Trademark/Copyright**

### Introduction.

A. The power of the Trademark/Copyright Notice is the common law: unwritten, ancient, and immutable. The Trademark/Copyright Notice forms the basis of your ability to enforce ownership rights over all property associated with, and registered in the TRADE NAME of, your juristic person. For this reason it is vital that you formally establish your claim of right of ownership of property under the common law on the public record. Ideally you would file your Trademark Agreement and Notice at the county clerk/recorder's office, but this office, like all government offices, has been set up not for the purpose of enhancing the quality of life for the little guy, but for functioning as an integral cog in Big Brother's property- and wealth-confiscation machinery.

The common law is alive and well and underlies all intercourse amongst all Americans, and all law forms as well, including the Uniform Commercial Code, but the criminal brilliance of the Chosen Masters in the legal, commercial, and financial arenas has completely obliterated people's awareness of it. The Norman French attorneys that destroyed the quality of life and property rights in England beginning in 1066 have carried forward across the centuries and have accomplished the same feat on this side of the Atlantic. By switching the language, (having you believe a word means 1 thing in common usage but something totally different in law) (Grab a Black's Law Dictionary and look up the word "Rectum". No joke, please look it up. It means an

accusation or trial) the whole of English society was thrown into upheaval and the king's esquires, with force of arms backing them, legally ravaged the population. The same tribe of miscreants is now wreaking its wrath on America and the rest of the world: the new attorney language is Latin, not French, and people are drowning in an endless ocean of "code." Most people are too overwhelmed by the rigors of staying alive and paying their bills and taxes to even mount a defense—to even know what, *exactly*, is wrong. No matter the amount of grief, misery, and chaos inflicted by the man-haters of the Money Power, however, *accessing the common law instantly levels the entire playing field.*

All names constitute property; nothing more, nothing less. The esquire shysters that enforce the agenda of the Legal Masters of the World have gotten one and all to *identify* with the name, have gotten people to believe that they *are their own name*. A name is useful communication tool for getting someone's attention—but response is voluntary (and this is what sovereignty is all about). When Big Brother's operatives ask you for your name, they are asking you to turn over your private property, they are asking for you to voluntarily surrender control of your private property so they can use the name you give them to create an account and lodge a charge in it—the *private property that you voluntarily give them*. If they do not get a name, guess what: there is no account and there is no charge.

On the other side of the coin: when someone takes your property without authorization—*i.e.* without you voluntarily giving it to them— and uses it for financial gain, you have an innate right (the nature of common law) *to charge them* for it. The UCC is expressly designed by esquire front men to facilitate this undertaking (you just weren't supposed to find out about it). All you need is the perpetrator's name (and address) and the UCC to enforce your common-law property rights.

The common-law trademark/copyright of the name has been constructed so as to align perfectly with the agreed-upon tenets of the UCC, thereby augmenting your common-law right to require and obtain just compensation for the (unauthorized) use of your private property. The thoroughness of the Trademark/Copyright Notice in spelling out the minute details of the terms of doing business with you demonstrates the "good faith" and "reasonableness" and "full disclosure" on your part—because the intention is to follow through exactly as stated in the Trademark/Copyright Notice and do what you say will do if someone chooses to do business with you.

You must understand the trademark is governed by your state trademark laws. Here is some information regarding state trademarks and rules, violations, as well as procedures.

**Alaska:**

Trade and Commerce Title 45, Chapter 45.50, Competitive Practices and Regulation of Competition, Article 01, Trademark

**Alabama:**

Title 8 Commercial Law and Consumer Protection, Chapter 12, Trademarks, Names, Marks, Devices, and Labels

**Arkansas:**

Chapter 71 of the Arkansas Code, Trademarks and Labels.

**Arizona:**

Title 44, Trade and Commerce, Chapter 10, Competition and Competitive Practices, Article 3-Registration and Protection of Trademarks and Service Marks:

44-1441 - Definitions 44-1442 - Registerability 44-1443 - Application for registration 44-1444 - Certificate of registration; admissibility as evidence 44-1445 - Duration of registration; renewal notice; application and fee 44-1446 - Assignment of mark and registration 44-1447 - Records 44-1448 - Cancellation of registrations 44-1448.01 - Injury to business reputation; dilution 44-1449 - Classification of goods or services 44-1450 - Fraudulent registration; damages 44-1451 - Remedies for infringement 44-1452 - Common law rights 44-1453 - Counterfeit marks; violation; classification; presumption; seizure; forfeiture; remedies; definitions 44-1455 - Use of unauthorized copy of computer software; violation; classification 44-1456 - Use of trademarked container for other articles; violation; classification.

**California:**

Division 6, Business Rights General Provisions, Chapter 2, Registration and Protection of Trademarks, Section 14200 et seq.

**Colorado:**

Title 7-Corporations and Associations, Chapter 7, Trademarks, Business and Farm Names-Article 70 - Trademarks, 7-70-101 to 7-70-113.

Definitions: Section 7-70-101; Application for Registration: 7-70-102; Certificate of Registration: 7-70-103; Duration and Renewal: 7-70-104; Assignment and Change of Name: 7-70-105; Records: 7-70-106; Cancellation by Secretary of State: 7-70-107; Action for Cancellation: 7-70-108; Classification : 7-70-109; Fraudulent Registration: 7-70-110; Infringement-Civil Action 7-70-111; Remedies: 7-70-112; Common Law Rights: 7-71-113; Membership of Firm-Business under Assumed Name-Fees: 7-71-101; Penalty for Failure to File: 7-71-102.

**Connecticut:**

Title 35, Trade Regulations, Trademarks and collective and Certification Marks, Chapter 621a, Trademarks and Service Marks, See Also Chapter 620a Marks

**Delaware:**

Title 6, Chapter 33, Trademarks, Brands and Labels.

3301 Short Title 3302. Definitions. 3303. Registerability 3304. Application for registration. 3305. Certificate of registration. 3306. Duration and renewal. 3307. Assignment. 3308. Records. 3309. Cancellation. 3310. Classification. 3311. Fraudulent registration. 3312. Infringement. 3313. Injury to business reputation; dilution. 3314. Remedies, including injunctions against forged or counterfeited trademarks, service marks, or copyrighted or registered designs. 3315. Common-law rights.

**Florida:**

Title XXXIII Regulation of Trade, Commerce, Investments and Solicitations, Chapter 495: Registration of Trademarks and Service Marks

Definitions. 495.011 Registerability 495.021 Reservation.495.027 Application for registration. 495.031 Use by related companies. 495.041 Disclaimers. 495.051 Certificate of registration. 495.061 Duration and renewal. 495.071 Assignment. 495.081 Records. 495.091 Cancellation. 495.101 Classification. 495.111 Fraudulent registration. 495.121 Infringement. 495.131 Remedies. 495.141 Injury to business reputation; dilution. 495.151 Common-law rights. 495.161 Effective date; repeal of prior acts. 495.171 Construction of chapter 495.181.

**Georgia:**

The Official Code of Georgia Governing Trademarks : Title 10, Section 1-440 et seq.

**Hawaii:**

Division 1, Title 20, Chapter 482, Trademarks, Prints, Labels and Trade Names, Registration and Protection of

Section 482-1 Definitions 482-2 Certificate 482-3 Record, issuance and effect of certificate 482-3.5 Penalty 482-4 Certain prints, labels, trademarks, service mark, union labels and trade names not to be adopted or used 482-5 Penalty 482-6 Revocation of certificate; nonuse 482-7 Application of law; reissue on nonuser 482-8 Revocation of certificate; ownership 482-9 Appeal 482-10 Registration of name, title, or other mark or device on bottles, siphons, tins, kegs, or other containers 482-11 Unlawful traffic in bottles, etc., registered under section 482-10 482-12 Unlawful use of milk bottles, etc.; penalty

**Iowa:**

Registration and Protection of Marks, of Title 13, Subtitle 5

548.101 Definitions.; 548.102 Registerability 548.103 Application for registration. 548.104 Filing of applications. 548.105 Certificate of registration. 548.106 Duration and renewal. 548.107 Assignments, changes of name, and other instruments. 548.108 Records. 548.109 Cancellation. 548.110 Classification. 548.111 Fraudulent registration. 548.112 Infringement. 548.113 Injury to business reputation--dilution. 548.114 Remedies. 548.115 Forum for actions regarding registration--service on out-of-state registrants. 548.116 Common law rights. 548.117 Fees.

**Idaho:**

Title 48: Monopolies and Trade Practices, Chapter 5, Registration and Protection of Trademarks, 48-501 Definitions 48-502 Registerability 48-503 Application for Registration 48-504 Filing of Applications 48-505 Certificate of Registration 48-506 Duration and Renewal 48-507 Assignments, Amendments, Changes of Name and Other Instruments 48-508 Records 48-509 Cancellation 48-510 Classification 48-511 Fraudulent Registration 48-512 Infringement 48-513 Injury to Business Reputation--Dilution 48-514 Remedies 48-515 Forum for Actions Regarding Registration--Service On Out-of-State Registrants 48-516 Common Law Rights 48-517 Fees 48-518 Time of Taking Effect--Repeal of Prior Acts--Intent of Act

**Illinois:**

Illinois Compiled Statutes, Chapter 765, Property: Trademark Registration and Protection Act 1036

See Also Rights and Remedies, Chapter 765, Property: Miscellaneous Property, Counterfeit Trademark Act 1040

**Indiana:**

Indiana Code, Title 24, Art 2 Trademarks, Tradenames and Trade Secrets

**Kansas:**

Kansas Statutes: Chapter 81-Trademarks and Service Marks: Article 2: 81-201 Title

**Kentucky:**

Kentucky Revised Statute, Title 29, Chapter 365

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**Louisiana:**

Louisiana Revised Statutes: Section 213, Powers of the secretary of state; reservation of trade names, trademarks, and service marks.

**Maine:**

Title 10: Commerce and Trade, Part 4: Trademarks and Names, Chapter 301-A, The Registration and Protection of Marks

§ 1521. Definitions § 1521-A. Use of marks § 1522. Registration § 1523. Attested copy § 1524. Duration and renewal § 1525. Assignment § 1525-A. Amendment §1526. Records § 1526-A. Information requests § 1527. Cancellation; classification § 1527-A. Powers of the Secretary of State § 1527-B. Expedited service § 1527-C. Access to Secretary of State's database § 1527-D. Publications § 1528. Fraudulent registration § 1529. Infringement § 1530. Injury to business reputation; dilution § 1531. Remedies §1532. Common law rights

**Maryland:**

Business Regulation, Index to Trademark Laws of Maryland: Article, § 1-401 et seq.,

§ 1-401. Definitions § 1-402. Effect of subtitle § 1-403. Records § 1-404. Registration authorized § 1-405. Classes of goods and services § 1-406. Applications for registration § 1-407. Hearings § 1-409. Issuance and contents of certificate of registration § 1-410. Term and renewal of registration § 1-411. Assignment § 1-412. Cancellation of registration. §1-413. Fraudulent registration § 1-414. Infringement

**Massachusetts:**

General Laws of Massachusetts, Chapter 110B, Registration and Protection of Trademarks

Section 1. Definitions. Section 2. Application for registration of trademark; filing. Section 3. Registration restrictions. Section 4.. Certificate of registration; issuance; status as constructive notice and as evidence; defenses. Section 5. Effective term; renewal; fee; notification of expiration; statement of use. Section 6.. Assignment of marks and registration; recording; fee; good faith purchasers for value protected. Section 7. Public records. Section 8. Cancellation of registration. Section 9. Rules and regulations; classes of goods and services. Section 10. Fraudulent procuring of registration; damages. Section 11. Use or counterfeiting of marks without consent of registrant; remedies. Section 12. Injunctive relief. Section 13. Counterfeit or

imitation marks; injunction; damages; destruction. Section 14. Common law rights. Section 15. Rules and regulations; administrative proceedings. Section 16. Severability.

**Michigan:**

Act 242 of 1969, Trademarks and Service Marks

**Minnesota:**

Chapter 333, Assumed Names, Insignia, and Marks:

333.001 Definitions. 333.01 Commercial assumed names. 333.02 Filing of certificate. 333.03 Repealed, 1978 c 698 s 9 333.035 Amendment of certificate. 333.04 Secretary of state; duties, fees. 333.05 Repealed, 1978 c 698 s 9 333.055 Term of certificate; renewal, notices, fees. 333.06 Pleading failure to file certificate; costs. 333.065 Penalty for violation. 333.07 Lodges, societies and the like may register. 333.08 Application. 333.09 Secretary of state to keep record and index. 333.10 Duplicates not registered. 333.11 Issuance of certificates. 333.12 Fees. 333.13 Violations; penalties. 333.135 Improper use of insignia. 333.14 Unauthorized use is a crime. 333.15 Threatened use may be restrained. 333.16 Vested rights not affected. 333.17 Forbidden in business; "marine" exception. 333.18 Definitions. 333.19 Unregisterable matter; collective and certification marks. 333.20 Application; form, signature, specimen of mark, fee. 333.21 Certificate of registration, issuance, evidentiary effect. 333.22 Term of registration; renewal, notice, fee. 333.23 Conveyances of marks; recordation, fee, necessity. 333.24 Secretary of state's record of marks. 333.25 Cancellation of marks. 333.26 Must use U.S. patent and trademark office system. 333.27 Improper registration; liability. 333.28 Identical or similar marks; liability for misuse. 333.285 Dilution of distinctive famous mark may be enjoined. 333.29 Remedies. 333.30 Marks acquired at common law. 333.305 Forum is district court; service on nonresident registrant. 333.31 Service of process upon nonresident registrants. 333.40 Trademark; when deemed affixed. 333.41 Trademarks of workers' unions. 333.42 Counterfeiting or dealing in counterfeits; how punished. 333.43 Registration. 333.44 Fraudulent registration or use; penalty. 333.45 Illegal use of certificate of registration. 333.50 Unauthorized use is a crime. 333.51 Threatened use may be restrained. 333.52 Vested rights not affected. 333.53 Unauthorized use is a crime. 333.54 Threatened use may be restrained.

**Mississippi:**

Mississippi Code of 1972 As Amended, Title 75 Regulation of Trade, Commerce and Investments, Chapter 025

75-25-1 Definitions. 75-25-3 Registerability 75-25-5. Application for registration. 75-25-7 Certificate of registration. 75-25-9. Duration and renewal. 75-25-11. Assignment. 75-25-13. Records. 75-25-15 Cancellation. 75-25-17 Classification. 75-25-19 Fraudulent registrations. 75-25-21 Infringement. 75-25-23 Remedies. 75-25-25 Common law rights. 75-25-27 Fraternal associations or societies. 75-25-29. [Effective January 1, 1997] Actions for cancellation. 75-25-31. [Effective January 1, 1997] Good faith acquisition of marks. 75-25-33 [Effective January 1, 1997] Fees.

**Missouri:**

Missouri Revised Statutes, Chapter 417: Trademarks, Names and Private Emblems:

Section 417-005 Definitions. Section 417-011 Prohibited Marks; Section 417.016 Registration of trademark--application, contents--information required by secretary of state--fee, how payable--refusal to register mark, procedure. Section 417-018 Additional fee. Section 417-021 Certificate of registration, how issued--admissible as evidence--duplicate of certificate, application, fee--abstract of mark, fee. Section 417-026 Term of registration--notice of expiration, when required. Section 417-031 Assignment of mark, procedure. Section 417-036 Registry of marks open to public. Section 417-041 Cancellation of marks, when. Section 417-046 Classes of goods and services--single application for mark to cover only one class. Section 417-051 Fraudulent filing or registration--civil damages to injured party. Section 417-056 Prohibited acts--civil action for damages, when. Section 417-061 Injunctive relief, when--order for payment to owner of mark --destruction of counterfeit marks. Section 417-066 Common law marks not affected--pending suits not affected--actions to require cancellation of a mark or to compel registration, venue, parties.

**Montana:**

Title 30, Chapter 13, Assumed Business Names, Trademarks, and Related Rights, Part 3  
Trademarks

**Nebraska:**

Trademark Registration Act of 2000, Sections 87-126 through 87-144.

**Nevada:**

Nevada Revised Statutes, Registration and Protection of Trademarks, Tradenames and Service Marks Section 600.240 to 600.450

**New Hampshire:**

Revised Statutes of the State of New Hampshire, Chapter 350-A, Model State Trademark Act

**New Jersey:**

Title 56, Trade Name, Trademarks and Unfair Trade Practices, Chapter 3, 1995 Amendatory and Supplementary Act.

**New Mexico:**

Chapter 57, Article 3B, Trademarks

57-3B-1. Short Title 57-3B-2. Purpose and intent of act 57-3B-3. Definitions 57-3B-4. Registerability 57-3B-5. Application of registration 57-3B-6. Filing of application 57-3B-7. Certificate of registration 57-3B-8. Duration and renewal 57-3B-9. Assignments; changes of name and other instruments. 57-3B-10. Records. 57-3B-11. Cancellation. 57-3B-12. Classification. 57-3B-13. Fraudulent registration. 57-3B-14. Infringement. 57-3B-15. Injury to business reputation; dilution. 57-3B-16 Remedies. 57-3B-17. Applicability.

**New York:**

GBS - General Business Article 24- Trademarks, Service Marks and Business Reputation

**North Carolina:**

Chapter 80. Trademarks, Brands, etc. Article 1, Trademark Registration Act.

**North Dakota:**

North Dakota Secretary of State Office with links to Century Code, Chapter 47-22 and forms in .pdf format

**Ohio:**

Ohio Revised Code, Chapter 1329: Labels and Marks.

**Oklahoma:**

Oklahoma Trademark Code, Title 78, Chapters 21-29

**Oregon:**

Oregon Revised Statutes, Chapter 647: Trademarks and Service Marks

**Pennsylvania:**

Trademark Registration Fees and Forms

**Rhode Island:**

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**South Carolina:**

Title 39, Trade and Commerce, Chapter 15: Labels and Trademarks

**South Dakota:**

Title 37, Trade Regulations, Chapter 37-6: Trademark and Service Mark Protection

**Tennessee:**

Title 47, Chapter 25 Trade Practices, Part 5, Tennessee Trademark Act of 2000

**Texas:**

Business and Commerce Code, Chapter 16: Trademarks

**Utah:**

Utah Code -- Title 70 -- Chapter 03-- Trademarks and Service Marks

**Vermont:**

TITLE 09: Commerce and Trade Chapter 071: Trademarks, Registration of Name or Mark

**Virginia:**

Title 59.1 - Trade and Commerce: Chapter 6.1 - Registration and Protection of Trademarks and Service Marks

§ 59.1-92.1. Short title. § 59.1-92.2. Definitions. § 59.1-92.3. Registerability § 59.1-92.4. Application for registration. § 59.1-92.5. Filing of applications. § 59.1-92.6. Certificate of registration. § 59.1-92.7. Duration and renewal. § 59.1-92.8. Assignments and changes of name. § 59.1-92.9. Records. § 59.1-92.10. Cancellation. § 59.1-92.11. Classification. § 59.1-92.12. Infringement. § 59.1-92.13. Remedies. § 59.1-92.14. Service on out-of-state registrants. § 59.1-92.15. Common law rights. § 59.1-92.16. Fees § 59.1-92.17. Commission may consider final judgments. § 59.1-92.18. Appeals from final action of Commission. § 59.1-92.19. Regulations and forms. § 59.1-92.20. Fees to cover expense of regulation. § 59.1-92.21. Olympic symbols.

**Washington:**

Revised Code of Washington; Trademark Registration: Chapter 19.77

**West Virginia:**

Chapter 47, Regulation of Trade, Article 2 : Trademarks in General

**Wisconsin:**

2001 Wisconsin Statutes: Chapter 132: Trademarks, Badges and Labeled Products

### Wyoming:

2000 Wyoming Statutes, Title 40: Trade and Commerce, Chapter 1, Trademarks and Service Marks

[http://media.wiley.com/product\\_data/excerpt/14/04712094/0471209414.pdf](http://media.wiley.com/product_data/excerpt/14/04712094/0471209414.pdf)

### Trademark Basics Overview

After reading this chapter you will be able to:

- Understand why the legal system protects trademarks
- Identify trademarks
- Understand the scope of state and federal trademark laws
- Know how to use trademarks in commerce
- Compare trademarks to utility patents, design patents, and copyrights

Trademarks have been used for centuries—probably as long as there has been more than one person carrying out a particular trade, or selling merchandise of a particular type, at the same market, or in the same town. An important part of business is developing a reputation for selling unusual merchandise, or for quality or variety of products, or for high value. A business can succeed only if customers buy its products or use its services. One of the most important functions of marketing and advertising is to create demand, not just for a particular type of product, but for the advertiser's or marketer's own goods. Trademarks (words, pictures, combinations of words and images, even sounds or fragrances) are important tools in identifying the business that provides the goods or services. A good trademark makes the product stand out.

Because trademarks are such a key part of doing business, federal and state law protect a business's right to identify its own merchandise and to keep other people from counterfeiting merchandise or using confusingly similar trademarks. However, the legal rules for trademarks (and the related concept of trade dress—the appearance and packaging of merchandise) are complicated and sometimes *counterintuitive*: they are not necessarily what a person in business would assume, based on experience in selling products. This book is designed to make confusing rules easier to understand.

### Focus of the Book

This book covers a spectrum of related topics. Following the introduction of trademarks and trademark law in Chapters 1 and 2, the main concentration is on trademarks themselves. In addition, Chapter 2 touches on a large and growing group of issues: the difficult relationship between trademarks and the Internet, including but not limited to when trademarks can be used as URLs and when a *cybersquatter* can be punished for misuse of domain name registration. In many ways, the concepts of *brand* and *trademark* are closely related, although *brand* is a more modern and *trademark* a more traditional idea. But even though they are similar, they are not identical. Both of them involve product image and goodwill, **but the concept of trademark focuses on the source of the goods**. A consumer might have very high awareness of *brand*—might, for instance, have a shopping list that contains JIF peanut butter, ARRID EXTRA-DRY

deodorant, DEL MONTE canned vegetables, CAMPBELL's canned soups, CREST toothpaste, and so on. This consumer might have a strong preference for these brands, based on a belief in their superior quality and attractiveness, and might take a rain check rather than purchase a competing brand, yet have no knowledge or interest in who manufactured the preferred brands. In fact, in today's business climate, where mergers and product divestitures are common, a brand might have been owned by several companies. Thus, the brand does not provide proof of source. In this book, we focus on the concepts of trademark. Chapter 3 covers how to search to see if a desired trademark is available, and how to register a trademark. Chapter 4 discusses what to do in case of an allegation of trademark infringement or if the trademark owner believes that the trademark has been infringed. The subjects of service marks and trade dress are addressed in Chapter 5. Chapter 6 covers threats to trademarks. However, **a trademark is only one form of intellectual property.** In the current business climate, businesses are becoming more and more aware of the importance of trademarks, trade secrets, patents and design patents, copyrights, and digital media assets to business success. The rules affecting these forms of intellectual property can be complex and overlapping. Inventing, manufacturing, and marketing a product can involve multiple forms of intellectual property, each with its own legal consequences. These issues are addressed in Chapter 7. In addition to trademarks and related subjects, this book also covers the law of unfair competition in business, because other forms of unfair business practice can overlap with trademark infringement. Chapter 8 tackles this subject. For your convenience, the book closes with several appendices and legal forms. When used in conjunction with the information presented in this text, the end material should equip you with the essential concepts you need in handling trademark issues.

### Sources of Trademark Law

Trademark law was already in existence in England when the American Revolution occurred, and many of those concepts were adopted as U.S. law evolved. Merely using a trademark in commerce creates some protect able rights against unfair competition and imitation of the trade-mark. This is known as a common law trademark; the rights that arise are limited to the geographic area in which the mark is being used. However, as described in detail in this book, registering a trademark (with the state, the federal Patent and Trademark Office, or both) is often worthwhile because it increases the rights of the registrant against a trademark infringer. Remedies for trademark infringement can include injunctions, seizure of infringing or counterfeit merchandise, and money damages: see Chapter 4. Once a trademark is registered, it will become part of a large standard database that is open to the public. The practical effect is that businesses that are contemplating the use of a new trademark can search the database and discover if it is already in use, or if it might be considered confusingly similar to a trademark already in existence. The legal effect is that once a trademark is registered, or even published for objections, everyone is deemed to have knowledge of it, and can be held responsible for the knowledge.

### Research Sources:

There are Registers listing state and federally registered trademarks, but no counterparts for common-law trademarks. Nevertheless, there is a legal obligation to at least try to research common-law trademarks as part of the trademark search for instance, by consulting telephone listings and business directories and examining the trademarks used on products available in stores. Once a trademark is registered with the federal Patent and Trademark Office (PTO), the

symbol ® can be used in connection with the trademark. Any registered trademark, on either the Principal or the Supplemental Register, can use this symbol. **Any trademark, registered or not, can be identified with the symbol™.** This symbol just indicates that trademark rights have been asserted in the mark, not that any government agency has approved or registered the mark. Another advantage of registering a trademark is that, five years after a trademark has been registered, the general rule is that it will become *incontestable*—that is, no one will be allowed to bring a legal challenge to the validity of the trademark. However, the law contains a list of exceptions. A trademark can be challenged even after five years if it was obtained fraudulently, if the trademark owner has abandoned it (has stopped using it in commerce), and if the trademark has become *generic*—that is, if it is used to identify a whole class of products rather than the products of a specific company.

### **State Trademark Law**

All of the states have some trademark and unfair competition laws of their own. In other words, even though patent law is considered so purely federal that states are not allowed to operate in this area, trade-mark law is shared by both the state and federal systems. State trademark laws tend to come into play when a trademark is used purely locally, not nationwide or in a multi-state area, or if a trade-mark is of a type that is not eligible for listing on the federal Principal Register. In general, state trademark law doesn't create a presumption that the trademark is valid, and doesn't make trademarks incontestable after a five-year period, the way federal law does.

### **Model State Trademark Bill**

Forty-six states have adopted the Model State Trademark Bill (MSTB), which specifies how trademarks and service marks can be registered. Under the MSTB, radio and TV program titles and character names can be registered as service marks. The MSTB provides that a mark is “in use” when it is used in ordinary business; token transactions to reserve a mark don't count. Like federal law, the MSTB calls for marks to be placed on the goods, their containers, their displays, or tags or labels attached to the goods. The mark is supposed to be used on sales documentation for bulk goods or other items to which marks cannot be affixed. Service marks are to be displayed in sale or advertising or services.

The MSTB, like the Lanham Act, discussed later, denies registration to marks that are immoral, deceptive, scandalous, or disparaging to individuals, that are just descriptive or misdescriptive (geographically or otherwise), or that are primarily merely a last name—unless the last name has become distinctive through use in commerce. To preserve the right of publicity, the MSTB does not permit registration of a mark that consists of or includes a living per-son's name, signature, or portrait, unless the person has given consent. The term of protection under the MSTB is five years from the date of registration; it can be renewed an indefinite number of times, for five

### **Evidence**

Under the MSTB, using a last name as a trademark for a five-year period before the attempt to register it counts as evidence that it has become distinctive five years at a time, by filing a renewal request within six months before the expiration of the term. If a second trademark is used that is confusingly similar to an existing trademark, the holder of the first trademark is entitled to get an injunction on the basis of unfair competition that will require the second



trademark to be taken out of use. The confusingly similar trademark is subject to cancellation, and holders of the original trademark can get damages for trademark infringement and dilution. *Dilution* is imitating a trademark in a way that makes it less valuable by making potential customers associate inferior merchandise with the trademark. Under the MSTB, trademarks are considered abandoned either when there has been a two-year period without use of the trademark or the registrant of the mark stops using it and intends never using it again. Abandonment also occurs when the mark becomes generic or otherwise is no longer used as a trademark.

Trademarks can be canceled for the following reasons:

- The trademark holder voluntarily requests its cancellation.
- A court holds that the mark has been abandoned.
- A court holds that the registrant doesn't really own the mark.
- There was fraud or other impropriety in the securing of the registration.
- The mark is confusingly similar to another mark.
- The mark has become generic.

### **Federal Trademark Laws**

However, the most significant laws governing trademarks (and most other forms of intellectual property) are federal. The central statute covering trademarks is a federal law called the Lanham Act. The Lanham Act is a federal law, passed (and occasionally amended) by Congress. The federal agency responsible for administering federal trademark law is the Patent and Trademark Office (PTO). The PTO's regulations can be found in the Code of Federal Regulations (CFR). Amendments to the Lanham Act include the Trademark Revision Act of 1988 and more recent laws banning *cybersquatting* (improper practices involving registration of Internet domain names) and counterfeiting of trademarked merchandise—for example, imitations of Louis Vuitton handbags. The Lanham Act protects trademarks (as well as related types of marks such as service, collective, and certification marks) that are “used in commerce.” At first, the Lanham Act protected only trademarks that had already been put into use. However, under current law, a trademark can be registered and protected on the basis of intent to use it in the future. For instance, it can be used in connection with a product that is under development and will be released in the future. This is known as an *intent to use* (ITU) application. The final registration will not be granted until the intention to use matures and turns into actual use. The applicant has to update the application by submitting a verified statement and specimens proving that the mark has been placed in actual use in interstate or foreign commerce. Depending on the time when it is filed, the appropriate form is either an Amendment to Allege Use (AAU) or a Statement of Use (SOU).

### **Lanham Act §32**

(1) A person who has registered a trademark has the right to bring a civil suit against anyone who does one of two things without the consent of the registrant:

1. The infringer uses in commerce any “reproduction, counterfeit, copy or colorable imitation” of a registered mark in business, if such use is “likely to cause confusion, or to cause mistake, or to deceive.” (The provision about “colorable imitations” is there to make sure that infringers can't make tiny changes in the mark and then use that as a defense against a §32(1) lawsuit.)

2. The infringer reproduces, counterfeits, copies, or “colorably imitates” a registered mark, and then applies the nonlegitimate mark to “labels, signs, prints, packages, wrappers, receptacles or advertisements” used in trade, once again if the likely result is confusion, mistake, or deception.

The difference between these two very similar-sounding provisions is that the trademark holder can only get an award of damages or lost profits in a case of the second type if the infringer committed its acts with knowledge that the imitation is intended to be confusing or deceptive. It is not necessary to prove that the infringer’s intentions were wrongful to win a case of the first type. Lanham Act §43(a) The Lanham Act also forbids a very broad range of unfair or inappropriate conduct that could cause consumer confusion—even if there are no registered trademarks involved. Section 43(a), which is often used in trade dress and false advertising cases, allows a civil suit to be brought by “any person who believes that he or she is or is likely to be damaged by such act.” The forbidden acts are • Use of words, symbols, devices, etc. (including combinations)

- False designation of origin

- False or misleading description of fact

- False or misleading representation of fact, either

“on or in connection with any goods or services” or any “container,” if the wrongful act occurs in “commerce.” Section 43(a) bans all activities that are likely to cause confusion or mistake “as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.” This is broad enough to cover, for example, an advertisement that describes rhinestone jewelry as diamond jewelry. It also covers trademark and trade dress infringement, because that misleads or could mislead consumers about who has produced the merchandise in question.

## **Use in Commerce**

For legal purposes, trademarks do not exist in the abstract. They identify the goods or services of a particular provider and are related to the goodwill associated with the product. Therefore, federal trademark law does not allow a trademark to be registered until it is already in use, or unless the party that seeks to register the trademark is willing to go on record that it intends to use the trademark in commerce in the future. Once the registrant stops using the trademark in commerce, it is *abandoned*. A defendant accused of trademark infringement can get the case dismissed by showing that the owner abandoned the trademark that allegedly was infringed. Furthermore, even if a trademark has been registered and in use for five years (which would otherwise probably make it incontestable), someone else who wants to use the same or a very similar trademark.

## **Abandonment**

Under earlier law, failing to use a trademark for two years constituted strong evidence that the trademark had been abandoned. However, effective January 1, 1996, the Lanham Act has been amended. Now, abandonment is not presumed until *three* years have passed without use of the trademark can advance the legal argument that the trademark has been abandoned by its original owner.

Under §45 of the Lanham Act, “use in commerce” means bona fide **use in the ordinary course of trade**. Token usages that are merely intended to preserve the mark are not sufficient, because unless the trademark is used in connection with marketing and at least attempted sale of goods, there’s no goodwill to protect. A service mark is “used” when two conditions are met: the mark appears in ads and promotional materials, and the service is actually being provided to the public. Furthermore, §45 refers to trademarks being used *on* the goods. Therefore, as long as the trademark can physically be attached to the goods, it should be placed there and not just on the documents associated with the goods or in advertisements. Of course, some merchandise simply can’t have trademarks attached—things sold in bulk like fuel oil, for instance—so in that case the trademark must be used on displays associated with the merchandise, or on the sales documents.

Some Uses Get a More Favorable Eye Some literal-minded PTO examiners will reject applications for a mark that will only be used as a design on the front of a T-shirt (e.g., a T-shirt using the photograph and logo of a band; a HARLEY-DAVID-SON or BUDWEISER T-shirt). Their argument is that this is purely ornamental, and therefore doesn’t use the trademark to indicate the source of the shirt. To avoid this problem, the trademark can be used on the shirt’s label and the garment tag attached to the shirt.

Examiners have less trouble with smaller logos—for example, the POLO horseman embroidered on a shirt.

### **The Risk of Confusion**

One of the most basic trademark concepts is the *risk of confusion*. The PTO Examining Attorney will refuse to register a trademark if it is close enough to an existing trademark to create such a risk. The potential for confusion is a key issue in infringement suits.

Legal analysts identify several kinds of confusion that can be harmful to competition. Therefore, trademark law tries to eliminate these types of confusion:

- *Source confusion* (the source of the goods is the business that controls the production, including quality, of the goods) — that is, consumers think a Company A product is actually made by Company B.
- *Confusion about sponsorship, approval, or certification*—for example, potential buyers think that mint cookies from a non-approved bakery are GIRL SCOUT COOKIES, or are induced to believe that a fabric bears the WOOLMARK when this is not the case.
- *Reverse confusion*—the public thinks that a newcomer to the market makes goods that actually come from an established source.
- *Subliminal or associational confusion*—consumers think that they have seen the trademark, or something like it, some-where before; this weakens consumers’ association between the goods and the actual holder of the trademark. Although usually the test is consumer confusion, other parties’ con-fusion may also be relevant: people who influence purchasing decisions, or distributors and wholesalers; lenders and investors; employees; and people who receive the goods as gifts or buy them second hand.

According to the *Restatement (3rd) of Unfair Competition* (a Restatement is a volume of legal trends in a particular subject, compiled by lawyers who are experts in that subject), likelihood of confusion is hard to prove, because it is unlike most other questions of evidence.

Those other questions involve past events, but likelihood of **confusion involves a future state of mind**. It may be necessary to draw conclusions by projecting existing consumer attitudes and behavior (in the relevant market) into the future. For trademarks that are word marks, or include both words and designs and therefore can be pronounced, confusion might be found on the basis of similarity of pronunciation, even if the marks are spelled differently. This is especially true if the merchandise is sold by telephone or advertised on radio or television. It is less likely to become an issue if the product is sold in stores where customers see it on the shelf. Common prefixes and suffixes used in a particular industry, such as *Ultra-* or *-col* or *-icin* for medicine, are likely to be disregarded in deciding whether confusion is likely. Many court decisions consider nearly all items of clothing to be closely related, so they are considered together in terms of likelihood of confusion. For example, a defendant would not have a very strong argument that the plaintiff's trademark was used on sweaters and the defendant's was used on blouses. In fact, because some items of clothing are unisex, and manufacturers often make both men's and women's clothing, clothing for both is often treated as a single market. The legal system assumes that trademark owners have an interest in expanding their product lines. So another issue is whether the trade-mark owner would be likely to "bridge the gap" by manufacturing the product that the defendant claims is in a completely separate market where consumers would not be confused. The basic legal rule is that using trademarks in comparisons is acceptable ("THRIFTY GAL moisture cream has the same percentage of Vitamin C and alpha-retinol as LUXURYPOSH moisturizer—but ours costs \$10 an ounce and theirs is \$100 an ounce!"). The theory is that comparison ads make it clear that two different brands are involved, so there is no risk of confusion, and the public is entitled to accurate information about different brands. (If the information is inaccurate, it becomes a false advertising or unfair competition question.)

## **Trademarks and Other Forms of Intellectual Property**

**Trademark law is part of the law of intellectual property.** It is important to understand how trademark law interacts with other intellectual property topics, especially because the same product—and certainly the same marketing campaign—may include several different forms of intellectual property protection. **Patents exist to protect functional features of manufactured items** (utility patents) and the way manufactured items look (design patents). **Copyrights protect the way that ideas are expressed in written, musical, dramatic, and visual works**—although not the ideas themselves. **Trade-marks protect the words, designs, and other indicators of the source, origin, and sponsorship of merchandise.**

### **Patents**

A *utility patent* is what most people think of when they hear the word *patent*. A utility patent protects the functional features of an item, a "composition of matter," or a novel method or process, for a period of 20 years (for patents issued on the basis of applications filed after June 8, 1995) or 17 years from the date of issue or 20 years after the filing date, whichever is longer (for filings before June 8, 1995; of course, many of those patents remain in effect). A utility patent can only be granted to a useful, novel, nonobvious invention that makes a meaningful step forward from the "prior art" (the state of technology existing before the new invention was created). A *design patent*, on the other hand, protects the aesthetic appearance of an object. For

instance, a utility patent might cover a new way for vacuum cleaners to collect dust and dirt, whereas the distinctive shape and appearance of the vacuum cleaner might be entitled to a design patent. A design patent can be granted only to the nonfunctional form of an object, and the patented design has to be novel and not obvious, considering the designs already on the market. The term of a design patent is only 14 years. In 1993, the Seventh Circuit decided that the configurations of sink faucets and faucet handles could be registered as a trademark, as a “package” or “configuration of goods” (Lanham Act §23), so this can be another avenue if a design patent is not available or not desirable, or if there was a design patent but its term has expired. In some ways, a patent is the most desirable type of intellectual property protection, because it is so absolute. A patent is a legal monopoly. During the term of the patent, no one except the patent holder and its licensees is allowed to “practice” the patent by using the process or manufacturing the invention that is covered by the patent. Even someone who independently discovers the same way to do the same thing (*reverse engineering*) won’t be allowed to use it as long as the patent is Design Patents Don’t Determine Trade Dress According to a 1996 case from the Southern District of New York, the existence of a design patent is neutral in its effect on whether trade dress (configuration and packaging of a product) is protectable—the design patent neither guarantees nor rules out protection of trade dress using trademark-related concepts still in force, because all patents are registered and on display where the public can access detailed descriptions of the invention. Disclosure is an essential part of the patent system. On one level, it serves to protect the patent holder, because everyone is expected to perform patent searches to avoid infringement. On another level, it benefits the concept of the progress of general knowledge, because inventors and technicians can keep current on what has been invented, and they might get new ideas for improving on the *prior art* (the database of existing and expired patents) and making new inventions that, in turn, can be patented. However, as soon as the patent expires, anyone is allowed to take advantage of the information contained in the patent application. Most forms of intellectual property protection come into effect automatically, even without registration (although property owners’ rights are greater in the case of registered intellectual property). In addition, the registration process is automatic in the case of copyrights and most trademark applications achieve approval. In contrast, review of patent applications is lengthy, painstaking, and expensive for the applicant. Even once a patent has issued, the patent holder’s life is not always smooth and easy. The owner may be embroiled in complex, expensive litigation against alleged infringers—or the validity of the patent may be challenged in court by others who claim that it infringes their patent, or that the patent should not have been issued in the first place.

### **Comparing Copyrights and Trademarks**

Sometimes it is hard to decide where copyright protection ends and trademark protection begins. This is especially true for series properties (e.g., a series of mystery novels, a television show, or even movies that launch several sequels). The title of just one work can’t be a trademark, but a series title can be, because, like all trademarks, it identifies the source. Furthermore, there may be protectable trademark rights in depiction of characters from fiction. As mentioned, the purpose of a trademark is to serve as a distinctive identifier of the source of goods. Designs used in a trademark must be nonfunctional. On the other hand, copyright protects original creative works of expression (including three-dimensional designs, as long as the form is not purely functional). One area of overlap comes from §102(a)(5) of the federal Copyright Act. This section allows copyright registration of pictorial, graphic, and sculptural works, including labels

and cartons—items that might also be defined as, or include, trademarks. The Copyright Office won't register labels or cartons unless they include copyrightable material (for instance, if the hangtag for ED'S LUMBERJACK JACKETS included a story about how a lonely lumber-jack spent his evenings sewing warm, sturdy jackets). Copyright registration will be denied if the material submitted for registration only includes trademark material and nothing that is entitled to copyright protection. A common-law trademark lasts as long as the mark is in use. A federally registered trademark lasts for 10 years, and can be renewed for an indefinite number of additional 10-year terms as long as the mark is still in use. The term of copyright protection (for works copyrighted in or after 1978) is the author's lifetime plus 70 years. For a work for hire, the term is 95 years from the date of publication, or 120 years from the date of creation, whichever comes first. Section 101 of the Copyright Act sets out two categories of works for hire. The first is work done by an employee, as part of his or her job. The other category covers work that is specially ordered or commissioned as part of a collective work (such as an anthology of essays, or a movie made up of several shorts), translations, and supplementary works such as tests and teachers' guides for textbooks. A 1989 U.S. Supreme Court case says that the fee paid to an independent contractor (not an employee) who creates a work for hire only entitles the commissioning party to one-time use of the work. The creator would be entitled to extra compensation if the commissioning party wants to re-use the work—unless at the beginning of the trans-action, the parties agreed to transfer all rights in the work in return for a one-time fee.

You seen some word used above that referred you to the Deceptive Trade Practices Act. Here is some sections by state for more study.

## **REVISED UNIFORM DECEPTIVE TRADE PRACTICES ACT**

### **Uniform Deceptive Trade Practices Act (1964 Act or 1966 Revision)**

Colorado (1966 Revision) - §§ 6-1-101 to 6-1-115

Delaware (1964 Act) - Del. Code, Title 6, Subtitle II, Ch. 25, Subchapter 3, §§ 2531-2536

Georgia (1966 Revision) - §§ 10-1-370 to 10-1-375

Hawaii (1966 Revision) - §§481A-1 to 481A-5

Illinois (1964 Act)

Maine (1964 Act)

Minnesota (1966 Revision) - §§ 325D.43 to 325D.48

Nebraska (1966 Revision) - §§ 87-301 to 87-306

New Mexico (1966 Revision) - N.M. Statutes, Chapter 57, Art. 12

Ohio (1966 Revision) - Ohio Revised Code, Title 41, Ch. 4165

Oklahoma (1964 Act) - 78 §§ 51 to 55

Oregon (1966 Revision) - §§ 646.605 to 646.656

### **Patents:**

This chapter is one of the easiest to understand yet the most difficult to put in place. The reason is simple. Most people do not know the history of the land they are on.

The next few pages are designed to help you understand how patents work and where they originally came from and what specifically they do and can not do. The information comes straight out of 63A AM JUR 2d 70-79. Please take time and read this part of the AM JUR so you have a great wealth of knowledge in this area before attempting any theories on land rights or protection.

For the most comprehensive information on land see the end of this section for the main source of all this section.

Please read on for more.

## **OWERANCE**

OWERANCE is a Scottish word meaning ‘mastery, control’ making it an appropriate name for a new organization whose purpose is to teach the Who, How, Why, What, Where and When based on historical and legal foundation principles of property ownership.

OWERANCE’s main objective is to keep the property owner out of the courtroom. The only logical way of accomplishing this is to make the property owner knowledgeable in property ownership and rights and to those laws the local, county, state or federal public servants shall rely upon.

This teaching process is two sided, meaning you will be required to work. Far too many people failed in protecting their property rights because they did not understand the proper use and application of their property rights. This continuing failure is based one constant fact; the human nature of taking the easiest and cheapest course of action to protect their most valuable piece of property. People spend hundreds dollars and several weeks or months out of their lives to purchase a piece of property. However, when ensnared in a property rights problem they seek the cheapest ‘magic silver bullet’ and then complain after they discovered it wasn’t magical after all.

I. OWERANCE will, at this immediate time, provide you with the following:

A copy from that portion taken from a original late 18<sup>th</sup> Century Cyclopedia describing the colonization of North America including, the charters and land grants of the original colonies, the histories and laws of those colonies from their inception and as well as the newly created states and United States. (1796) 455 pages

A copy of ‘History of Public Land Law Development’ written for the Public Land Law Review Commission commencing from the beginnings of the United States. (1968) 425 pages

A copy of ‘Commentaries On The Modern Law Of Real Property’ a legal treatise on foreign, state and United States land grants and patents (1965) 120 pages



A copy of 'Restoration Of Lost Or Obliterated Corners & Subdivision Of Section', a guide for surveyors written by Bureau of Land Management (1974) 47 pages

A copy of 'Historical Highlights of Public Land Management' written by U. S. Dept. of Interior commencing from the beginnings of the United States. (1962) 47 pages

A copy of 'Public Trust Doctrine In Natural Resource Law' a legal treatise for you to understand from whence the public servants come from. (1970) 48 pages

A copy of the Congressional Act(s) providing for the creation of the territorial government and thence the state your property is located in. If required, the treaty between the United States and the previous foreign nation that originally held possession of that land. Variable number of pages

A copy of your state's current annotated statutes pertaining to planning, zoning, signs, building codes, wetlands, woodlands, endangered species, navigable waters, historic districts, surveying, recordings of deeds and freedom of information requests. Variable from 650 to 1250 pages

A copy of the congressional act or your state's legislative act providing for the conveyance of the land and issuance of the title. Note: Based on II, A. requirements

K. Copies of various state and federal court decisions showing the force and effect of the original land titles and those laws which existed at the time of its issuance. 12 to 24 + court decisions, number dependent on who issued the original title and when issued.

L. Copies of hundreds of U.S. Supreme Court case decision cites covering the following subjects: Public Lands; State, Territories & Possessions; Cloud of Title; Deeds; Fiction of Law and Zoning. (1789 to current) 391 pages NEW ADDITION

II. You, the property owner, will provide OWERANCE with the following material;

A copy of the complete abstract of title for your property for its review to determine whether there are any breaks in the chain of title back to the original land title regardless of its origin and source. With that abstract OWERANCE can advise you who to contact in order to obtain a certified copy of that original title, the official land survey and the surveyors field notes. When you receive those certified records you will copy same and ship it to OWERANCE for its archive files.

Obtain a copy of your local governmental (be it township, village, city or county) corporations ordinances pertaining to I, H. above and ship it to OWERANCE for its review and archive files. Note that OWERANCE can not obtain such information from any legal source located in Michigan.

III. OWERANCE plans in the near future, based on how many society members utilize our service, to obtain the following: THIS HAS BEEN PUT ON HOLD DUE TO LACK OF FUNDING AND CUSTOMERS

### **BRIEF SUMMARY FOR BASIS AS TO WHY PERFORM A TITLE SEARCH (ABSTRACT)**

The United States of America never had, or held, sovereignty; proprietary title; public trust; public interest; control; or jurisdiction to, over and of the lands within the New England and Atlantic Coast states, excepting Florida, or Pennsylvania, West Virginia, Kentucky, Tennessee and Texas. The only exception being those lands which any state ceded total, partial or concurrent legislative jurisdiction, title, interest and control to the United States through their respective legislative act(s).

Excluding the founding states and Texas, all other states entered into the Union came from territories acquired by the United States of America either from the founding states cession of lands, outright purchase or treaty obligations from foreign national governments. Congress, empowered by Article IV, Sec. 3, Cl. 2 of the Constitution, enters new states into the Union out of the public domain. These states are 'public land' states and are given certain powers, duties

and responsibilities per compacts (contracts) identified as ‘Enabling Acts’ that Congress passes into law (statutes at large). Within some of these ‘public land’ states there exists land that had already conveyed into private ownership, prior to that territories acquisition by the United States of America, either from a previous foreign nation or one of the original founding states.

Congress by authority of Article IV, Sec. 3, Cl. 2 of the national Constitution passed hundreds of acts to dispose of land from the public domain or, to confirm titles called ‘private land claims’ issued by a foreign government. Today someone is buying land out of the public domain from the United States and title to that land will be a United States of America land patent. That land patent is issued to the original purchaser [the patentee], his/her heirs or assigns [who ever else buys that land] forever. All rights, privileges, immunities and appurtenances of whatsoever nature as stated in the Congressional act and patent became vested to the patentee, his/her heirs and the assigns on the date of purchase by the patentee. Once the land patent issues no one, including the grantor, the grantee, an heir or, an assign can change the patent.

The highest evidence of title for the possession, use and enjoyment of land, as determined by two hundred plus years of American jurisprudence is a land grant or patent, issued either by a previous foreign government, a state or the United States of America. The land grant or, patent, is conclusive evidence against all persons whose rights did not commence previously and, against those persons not in privity with the paramount source of the title. The only laws applicable to land are laws that existed at the time when title was issued. This applies to foreign royal charter, land grant or patent, a founding state’s, a public land state’s or a United States of America land grant or patent issued at any time. Current public policy; statutes; ordinances, administrative rules or regulations, legal definitions of words or phrases are not applicable.

What is the intent of the phrase ‘the patentee, his heirs and assigns’? That was determined by the U. S. Supreme Court in *Deli Vergne Refrigeration Machine Co. v Featherstone*, 147 U.S. 209:

‘The word ‘heirs’ in a patent should not be regarded as defining the extent of the patentees’ own interest. It is not used in a technical sense, but indicates the persons who are to have the benefit of the invention in the event of the patentee’s death. The absolute character of the interest of the

patentee is not attributable to the word. The words of the statute ‘the patentee, his heirs and assignee’ whether constructed according to the rules of grammar or to the intent of Congress mean, ‘the patentee, his heirs or assigns’. They comprehend the legal representatives, assigns in law, and assigns in fact and the phraseology raises no limitation in the strict common law rule applied to realty.’

Naturally the obvious question you now ask is; what is my first step to take?

A. First you need to locate the original title to land you intend to buy or already own by doing a title search (abstract):

1. If the land is located in a public land state you look up the legal description [original U. S. government survey] usually listed in your deed, mortgage papers or property tax statement. It will look similar to this: Serfdom Acres subdivision # 1, lot # 6, located in the southeast quarter of the northwest fractional quarter of section 10 in township T4N R6E

2. If the land is located in one of the founding states; Texas; West Virginia; Kentucky or; Tennessee, the legal description usually listed in those documents as referenced above may be described in what is called ‘meets and bounds’. Whereas, the legal description will be based on either a foreign nation’s or that state’s survey and look similar to this: Beginning at the large oak then running west for 2,000 rods to a large boulder, then southwesterly for 1,500 rods to a creek, then easterly along said creek for 3,000 rods to the point of beginning.

NOTE: In the original founding states original titles to land, especially located immediately in or near 250 - 350 year old cities, i.e.; New York City, Salem, Pittsburgh, Philadelphia, St. Augustine, etc., the chances are the original titles emanated from a European nation. Example: New York City; the title could be from Holland or England, if not then it would come from the State of New York. For West Virginia, Kentucky or Tennessee the original title could be from England, Virginia or the respective state itself. For Texas the original titles could be from Spain, Mexico or Texas. For Florida [a public land state] the original titles could be from Spain,

England, the United States of America or Florida. I can't go into exact detail for each of the 50 states or the various territories.

NOTE: In some county register of deeds offices land titles are recorded either by grantor/grantee listings which means the grantor is the seller and the grantee is the buyer or, by tract index which always deals with the specific legal description by on the original surveys. Also, be advised that one county register of deeds office may record by grantor/grantee while a neighboring county register of deeds office may record by tract index.

Now that you've located the original title you need to progressively work on up in history to determine that there was no break in the chain of title from that time to the present.

1. The reason for this is to make sure that you, if you already own the land, do not merely hold a 'Color of title' which is also called a 'marketable title'. 'Color of ...' means it looks, acts, feels and smells like the real "McCoy" but isn't, it only has the appearance of the real "McCoy". 'Marketable' means that if someone is willing to buy it even if it's worthless then it's marketable. Similar to buying my interest in the Brooklyn Bridge and then recording it. If the county where the subject land is located uses the tract index method of recording you can progressively work your way up in time to the present, just like reading a book.

If the county where the subject land is located uses the grantor/grantee method of recording then it's generally easier to work backwards in time, from the present backwards.

**REMEMBER – THE FIRST STEP YOU TAKE IS TO PERFORM AN ABSTRACT, OR TITLE SEARCH, ON YOUR EXISTING OR ON PROPERTY YOU PLAN ON PURCHASING. UNTIL THAT IS DONE YOU WILL MERELY BE GUESSING AND ASSUMING AS TO WHAT YOUR PROPERTY RIGHTS ARE.**

Owerance and Why Abstract written by and for more information contact:

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## ***IX. UCC Forms and how they work***

There are only a few UCC documents to speak of and they are relatively simple when put in an easy format. The UCC has:

**UCC-1-** An original UCC form used on a first time filing of the creation of interests

**UCC-3-** Changes an original UCC-1 in any way rather delete, change, or adds.

**UCC-5-**A correction form used by either a debtor or secured party to correct a

**UCC-11-** Used to perform searches for property. Search is done in debtor's name.

In order understand this better you first must understand that a UCC-1 or 3 by itself does nothing except for put the public on notice of an underlying agreement that created a security interest. If you do not have an underlying agreement, a security agreement, you have done nothing except pay the UCC unit for a filing that proves, attaches, and perfects nothing.

A security agreement is defined as:

UCC 9-102

73) "**Security agreement**" means an agreement that creates or provides for a security interest.

Now the ABC's of the UCC Revised Article 9 on page 18 reads "A security agreement is an agreement in which **the debtor transfers** a security interest in the collateral to the secured party. 9-102(a)(73). Thus, it is simply the consensual creation of a property interest.

For most security agreements, **attachment requires** that the debtor authenticate a security agreement containing a description of the collateral.

Also within this security agreement there are rules. There are 3 rules. The rules are:

1. the parties have an adequate security agreement
2. the secured party gives value, and
3. the debtor has rights or the power to transfer rights, in the collateral. 9-203(b)

The only other rules that apply are that on the UCC forms themselves that the Debtor and Secured party contact information must be clearly identifiable on the UCC forms and that proper filing fees be sent in order for filing. (See UCC 9-516 and 9-520).

Before even looking at the forms you must understand there are rules for filing. These rules can be found in Article 9 at sections 9-516-9-520.

**§ 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.** (Names of both parties, legible, and the correct filing amount received.)

**§ 9-517. EFFECT OF INDEXING ERRORS.** (If they make a mistake it will not impair the agreement. Again the security agreement supercedes the UCC NOTICE)

**§9-518 CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD**  
(UCC-5 Correction statements)

**§9-519 NUMBERING, MAINTAINING, AND INDEXING RECORDS, COMMUNICATING INFORMATION PROVIDED IN RECORDS** (UCC office duties with numbering etc of UCC Filings)

**§ 9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.** ((a) [Mandatory refusal to accept record.]

A filing office shall refuse to accept a record for filing for a reason set forth in Section 9-516(b) and may refuse to accept a record for filing **only for a reason set forth in Section 9-516(b)**

§ 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

**(a) [What constitutes filing.]**

Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

**(b) [Refusal to accept record; filing does not occur.]**

Filing (not effectiveness) does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office ;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:



(A) in the case of an initial financing statement, the record does not provide a name for the debtor ;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by Section 9-512 or 9-518 , as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515 ;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed [or recorded] in the filing office described in Section 9-501(a) (1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

Now §9-517 I think is the most interesting. Read on:

### **§ 9-517. EFFECT OF INDEXING ERRORS.**

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record. (If they make a mistake it is not your fault nor does it render a filing void. Hence a filing need not be in place to be effective to begin with.)

### **Fixture filings:**

A fixture filing covers goods that are permanently attached to the land or real property. Fixture filings are recorded at a county register of deeds office.

With this in mind remember that a UCC filing itself is NOTHING more than a NOTICE of an underlying agreement. The agreement is the power NOT the UCC notice.

This also proves that even if the UCC office does not record the UCC the agreement is still effective taking us to the fact that the agreement supercedes the state and the power to contract rests with the people. (In Michigan its Article 1 Section 10 of the State Constitution)

Keep in mind also that security agreements do not cover future advances automatically, the parties must agree to this provision.

Here is some good information from the UCC unit in Michigan for compliance rule when submitting any UCC filing. Please check your state for its rules and adoption.

[http://www.michigan.gov/sos/0,1607,7-127-1631\\_8851-22985--,00.html](http://www.michigan.gov/sos/0,1607,7-127-1631_8851-22985--,00.html)

Reasons for Rejecting UCC Filings

Uniform Commercial Code (UCC) Tips on Trouble Free Filings

**UCC1 and UCC3 filings can be rejected for a number of reasons.** Under Revised Article 9, it is the responsibility of filers to ensure their forms are complete and accurate. To ensure your filing is processed properly, please note the following:

Potential Reasons for Rejecting UCC1 Filings

1. No debtor last name; missing or incomplete address
2. No secured party name; missing or incomplete address
3. Submitted in an unacceptable medium
4. No minimum correct fee
5. Account number missing
6. Illegible writing

7. Debtor is not identified as either an individual or organization
8. No assignee name or address if applicable (Assignee should be listed on the UCC1 and the original secured party name should be listed on the UCC1 Addendum.)
9. Debtor organization type, jurisdiction or identification number is missing (If there is no identification number, type “none”.)

### **Potential Reasons for Rejecting UCC3 Filings**

1. Debtor name or address incomplete or missing when processing a name or address change
2. Assignee name, address and secure party name are missing when processing an assignment
3. Submitted in an unacceptable medium
4. No minimum correct fee
5. Account number missing
6. Illegible writing
7. Debtor is not identified as either an individual or organization
8. Not continued within six months prior to lapse
9. Original file number is missing
10. Original filing has lapsed or expired
11. Debtor organization type, jurisdiction or identification number is missing (When changing the debtor name, if there is no identification number, type "none".)

Also here is an update for those who say County register of deeds do not file.  
[http://www.michigan.gov/documents/ucc\\_update\\_fall\\_17966\\_7.pdf](http://www.michigan.gov/documents/ucc_update_fall_17966_7.pdf)

Under Revised Article 9, Section 9501 of the Uniform Commercial Code (UCC), the following financing statements **are filed at Register of Deeds offices**: (land and property. As long as it is in the county where the lands are)

- As extracted collateral
- Timber to be cut
- Fixtures

Existing records of financing statements filed before July 1, 2001 are still maintained at the county. Secured parties who are filing section 9706 “in lieu of” financing statements with the state need access to these records. This access also allows searchers to determine the correct

status of documents previously filed with the county. As of July 1, 2001, records of financing statements no longer filed at the county still need to be maintained for one year past the lapse date or until July 1, 2007, whichever is sooner. Unless an “in lieu of” financing statement has been filed under section 9706, termination is made at the county Register of Deeds office. Revised Article 9 does not change the location for terminating financing statements. Financing statements filed with the county Register of Deeds before July 1, 2001, or for the three types of collateral stated above, may still be terminated at the county Register of Deeds. The fee for a termination statement is now \$10 for the first two debtor names listed. Each additional debtor name is an additional \$10.

### **Register of Deeds offices still accept certain financing statements and terminations**

As authorized by Revised Article 9, Section 9707 (5), a financing statement filed at the county office before July 1, 2001 can be terminated at the county office. Register of Deeds offices still accept a termination statement referencing the original county filing number. Recording these terminations is critical to providing an accurate status for the collateral involved in the filing. The state UCC office cannot directly terminate the county filing when the original financing statement is not filed with the state. Terminating a financing statement at the state office requires the secured party to file an “in lieu of” UCC1 financing statement before a UCC3 financing statement to terminate. If a secured party files an “in lieu of” UCC1 with the state then later files a termination statement on the previous financing statement at the county Register of Deeds office, the state “in lieu of” financing statement remains effective. The purpose of the “in lieu of” financing statement is to continue or amend a financing statement filed with a county office before July 1, 2001. The “in lieu of” filing establishes or perfects the secured interests at the state UCC office. When an “in lieu of” financing statement is filed, it is assigned a new “initial” filing number. Any continuations or amendments at the state UCC office must reference the state issued initial filing number.

### **Financing statement terminations and in lieu of filings of**

With the enactment of Revised Article 9 on July 1, 2001, rules and procedures were changed concerning the filing of financing statements. Following are some of the most common errors made when filing financing statements, and what to do to avoid these errors. Filing financial statements: Avoiding common filing errors

**Omitting UCC1 organization information.** On filing statements naming an organization as the

debtor, the organization type, jurisdiction and organization identification number are frequently incomplete or missing from the financing statement. All three fields must be completed on organization financing statements. On the UCC1 Financing Statement, complete the organization type, jurisdiction and identification number, items 1e, 1f and 1g, respectively.

### **Omitting a UCC3 organization information.**

When adding or changing a debtor name, complete a UCC3 Financing Statement

Amendment. If the debtor is an organization, complete the organization type, jurisdiction and identification number, items 7e, 7f and 7g, respectively. To verify debtor organization information, contact the Michigan Department of Consumer and Industry Services at: [www.cis.state.mi.us/bcs/corp](http://www.cis.state.mi.us/bcs/corp).

Now the most important part of any UCC filing is its underlying agreement. The Notice (UCC Filing) only states there is an underlying agreement. Without an underlying agreement the UCC filing means nothing. Remember a security agreement is defined as:

§9-102 (73) "Security agreement" means an agreement that creates or provides for a security interest.

Now in order for a security agreement to be effective there are 3 rules.

1. The **debtor** MUST transfer a property, collateral, or a right to a property or collateral to the secured part. If the debtor can not prove ownership or a right to the property or collateral then the filing, no matter the terms or wording, any filing is not effective by its own lack of authority or right.

2. Another requirement is that the collateral be specific in nature. Not just super-generic words. Ie: "All property" is not effective. It must adequately describe the property or collateral. It must be clearly and specifically described so as to draw no confusion for other property or collateral. This eliminates false claims by ambiguous description of properties.

3. The last requirement is that the Secured Party must give value (consideration) for the property or right to or in property.

§ 1-201(44) "**Value**". Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3-303 , 4-208 and 4-209 ) a person gives "value" for rights if he acquires them

- (a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) as security for or in total or partial satisfaction of a pre-existing claim; or
- (c) by accepting delivery pursuant to a pre-existing contract for purchase ; or
- (d) generally, in return for any consideration sufficient to support a simple contract .

### § 3-303. VALUE AND CONSIDERATION.

(a) An instrument is issued or transferred for value if:

- (1) the instrument is issued or transferred for a promise of performance, **to the extent the promise has been performed**;
- (2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
- (3) the instrument is issued or transferred **as payment of, or as security for,** an antecedent claim against any person, whether or not the claim is due;
- (4) the instrument is issued or transferred in exchange for a negotiable instrument ; or
- (5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. **The drawer or maker of an instrument has a defense** if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

4-104 (8) "**Drawee**" means a person ordered in a draft to make payment.(This is YOU!!!)

### § 4-208. PRESENTMENT WARRANTIES.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft **in good faith that:**

(1) the warrantor is, or was, at the time the warrantor transferred the draft , a person **entitled to enforce the draft** or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) **the draft has not been altered**; and

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment **in good faith** that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the

claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

**(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.**

#### **§ 4-209. ENCODING AND RETENTION WARRANTIES.**

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith **may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.**

Once these 3 things are done and done correctly in accordance with the filing office requirements in §9-516-9-520, the UCC office will give minimal problems.

Now for some general questions and answers covering this section. (Source: <http://www.michigan.gov/sos/0,1607,7-127-12539---F,00.html#65> Michigan Secretary of State UCC unit)

What is the purpose of Uniform Commercial Code?

**Answer:**

The Uniform Commercial Code, or UCC, as it is commonly abbreviated, provides a central location for filing a public notice of a secured transaction. This notice, called a financing statement, is evidence of a commercial agreement between two



parties, called the debtor and secured party. The department's UCC office, upon request, also searches the filed information by name. When a business applicant pledges collateral on a loan, UCC search results tell lenders whether others have filed a claim against the same collateral.

What is a financing statement?

**Answer:**

A financing statement is an initial financing statement and all UCC documents that relate to the initial financing statement. An initial financing statement was formerly called an original financing statement. A financing statement is filed to perfect a security interest and provide a public notice of a security agreement between a debtor and a secured party. The financing statement describes certain types of collateral or property used as surety for the security agreement.

What forms do you accept for filing?

**Answer:**

The National UCC1 financing statement form and the National UCC3 financing statement amendment form, with revision dates of 5/22/02, are the standard filing forms used.

Where should I file a UCC financing statement?

**Answer:**

The Uniform Commercial Code designates where to file based on the type of collateral. Effective July 1, 2001, the collateral location no longer determines where to file. Filings for organizations are made in the state where the organization is registered. Filings for individuals are made in the state of residence. Filing in the wrong office is not a rejection reason

listed in the statute.

Are signatures required on an initial financing statement?

**Answer:**

Effective July 1, 2001, signatures are no longer required on an initial financing statement.

Is a tax identification number required for a filing?

**Answer:**

Effective July 1, 2001, a tax identification number is no longer required on initial and amendment financing statements.

Who determines the types of collateral included on a financing statement?

**Answer:**

This decision is left to the filer. Mortgages, fixtures, minerals, and timber to be cut are filed with the county Register of Deeds. Filing in the wrong office is not a rejection reason listed in the statute. All other types of collateral, including filings for transmitting utilities, should be filed with the State UCC Unit

How long is a financing statement active?

**Answer:**

If a continuation is not filed, the financing statement will lapse 5 years from the original filing date. A continuation extends the filing period 5 additional years from the initial filing date. Subsequent continuations may be filed in increments of 5 years and always expire on the anniversary date of the initial filing. A continuation may be filed up to 6 months before the expiration date of the financing statement. Under Revised Article 9, all

lapsed and terminated filings remain active for search reporting purposes until one year after the initial financing lapses or would have lapsed.

How do I terminate a financing statement?

**Answer:**

Terminate the financing statement in the office where the original financing statement was filed. If the original was filed with the State UCC office, terminate at the State UCC office. Likewise, if the original was filed with the County Register of Deeds, terminate at the County Register of Deeds.

What is a fixture filing?

**Answer:**

A fixture filing covers goods that are permanently attached to the land or real property. Fixture filings are recorded at a county Register of Deeds office. Crops growing or to be grown are not fixtures, and are filed at the UCC office.

What is the purpose of the Correction Statement?

**Answer:**

A correction statement may be filed by the debtor, not secured interests, if it is believed that a particular record is inaccurate or was wrongfully filed. The filing of a correction statement does not affect the effectiveness of a previously filed document. The UCC office files the correction statement with the initial filing, but no information in the initial filing is changed. The UCC office does not determine whether the correction statement is effective or legitimate. A financing statement amendment must be used to make changes on previous filings.

How do I change a county filing to the State UCC office?

**Answer:**

File an "in lieu of" initial financing statement with the State UCC office, in place of filing a continuation or other amendment financing statement (UCC3) at the county Register of Deeds office. Complete a UCC1 with current information for debtors, secured parties and collateral. An "in lieu of" filing may either list file numbers or include copies of multiple initial financing statements and corresponding amendment financing statements for the same debtor. The secured party determines whether or not to file an "in lieu of" filing.

What form is used to request a search of UCC filings?

**Answer:**

The UCC11 form is the approved form to request information and/or copies. State the debtor name you wish to search. Debtor names will be searched exactly as they were provided by the requestor. Also state whether you need an information listing of financing statements and tax liens, copies of the documents or both. The information listing does not provide information about collateral shown on financing statements

## X. UCC State status & contact information

Revised UCC Article 9 State Status As of July 2, 2001

State or Jurisdiction <i>51 of 51 enacted</i>	Enacted	Effective July 1, 2001 <i>4 with non-uniform effective dates</i>
Alabama	Yes	January 1, 2002
Alaska	Yes	Yes
Arizona	Yes	Yes
Arkansas	Yes	Yes
California	Yes	Yes
Colorado	Yes	Yes
Connecticut	Yes	October 1, 2001
Delaware	Yes	Yes
District of Columbia	Yes	Yes
Florida	Yes	January 1, 2002
Georgia	Yes	Yes
Hawaii	Yes	Yes
Idaho	Yes	Yes
Illinois	Yes	Yes
Indiana	Yes	Yes
Iowa	Yes	Yes
Kansas	Yes	Yes
Kentucky	Yes	Yes
Louisiana	Yes	Yes
Maine	Yes	Yes
Maryland	Yes	Yes
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes
Mississippi	Yes	January 1, 2002
Missouri	Yes	Yes
Montana	Yes	Yes
Nebraska	Yes	Yes
Nevada	Yes	Yes
New Hampshire	Yes	Yes
New Jersey	Yes	Yes
New Mexico	Yes	Yes
New York	Yes	Yes
North Carolina	Yes	Yes
North Dakota	Yes	Yes

Ohio	Yes	Yes
Oklahoma	Yes	Yes
Oregon	Yes	Yes
Pennsylvania	Yes	Yes
Rhode Island	Yes	Yes
South Carolina	Yes	Yes
South Dakota	Yes	Yes
Tennessee	Yes	Yes
Texas	Yes	Yes
Utah	Yes	Yes
Vermont	Yes	Yes
Virginia	Yes	Yes
Washington	Yes	Yes
West Virginia	Yes	Yes
Wisconsin	Yes	Yes
Wyoming	Yes	Yes

**ALABAMA**

Secretary of State, UCC Section  
PO Box 5616  
Montgomery, AL 36103-5616  
Phone: (334) 242-5231

**ALASKA**

State of Alaska  
UCC Central File System  
Dept. of Natural Resources  
Support Services Division  
3601 "C" Street, Suite 1140A  
Anchorage, AK 99503-5947

**ARIZONA**

Secretary of State, UCC Dept.  
Capitol West Wing, 7th Floor  
1700 West Washington Avenue  
Phoenix, AZ 85007  
Phone: (602) 542-6187

**ARKANSAS**

Secretary of State, UCC Division  
State Capitol, Room 025  
Little Rock, AR 72201-1094  
Phone: (501) 682-5078

**CALIFORNIA**

Secretary of State, UCC Division  
PO Box 942835  
Sacramento, CA 942835  
Sacramento, CA 94235-0001  
Phone: (916) 653-3516

**COLORADO**

Secretary of State, UCC Division  
1560 Broadway, Suite 200  
Denver, CO 80202-5169  
Phone: (303) 894-2200 (press 3)

**CONNECTICUT**

Secretary of State, UCC Unit  
30 Trinity Street  
Hartford, CT 06106  
Phone: (860) 509-6004

**DELAWARE**

Secretary of State —Div. of Corporations  
UCC Section  
PO Box 793  
Dover, DE 19903  
Phone: (302) 739-4270

**DISTRICT OF COLUMBIA**

Recorder of Deeds of the District  
515 "D" Street NW, Room 202  
Washington D.C. 20001  
Phone: (202) 727-5190  
(202) 727-5189

**FLORIDA**

Dept. of State  
UCC Filings  
Bureau of Commercial Recordings  
PO Box 5588  
Tallahassee, FL 32314  
Phone: (850) 487-6055

**GEORGIA**

Filing may done with the clerk at the Superior  
Court of each county (do not file with the  
Secretary of State).  
Phone: (404) 327-9058

**HAWAII**

Dept. of Land & Natural Resources  
Bureau of Conveyances  
PO Box 2867  
Honolulu, HI 96803  
Phone: (808) 587-0134

**IDAHO**

Secretary of State, UCC Division  
PO Box 83720  
700 West Jefferson  
Boise, ID 83720-0080  
Phone: (208) 334-3191

**ILLINOIS**

Secretary of State, UCC Division  
Howlett Building, Room 30  
2nd and Edwards St.  
Springfeild, IL 62756  
Phone:(217) 782-7518

**INDIANA**

Secretary of State, UCC Division 018  
302 Washington St. West  
Indianapolis, IN 46204  
Phone: (317) 232-6518

**IOWA**

Secretary of State, UCC Division  
Hoover Building; East 14th & Walnut St.  
Des Moines, IA 50319  
Phone(515) 281-5204

**KANSAS**

Secretary of State, UCC Division  
The State Capitol Building—2nd floor  
300 S.W. 10th St.  
Topeka, KS 66612-1594  
Phone: (785) 296-4564

**KENTUCKY**

Secretary of State, UCC Division  
700 Capitol Street, Suite 86  
State Capitol Building  
Frankfort, KY 40601-3493  
Phone: (502) 564-2848

**LOUISIANA**

Filing may done with the Clerk of the Court in each Parish (do not file with the Secretary of State).  
Phone: (504) 922-1314

**MAINE**

Secretary of State—UCC Filing Section  
Bureau of Corporations and Elections  
State Office Bldg Room 221  
101 Statehouse Station  
Augusta, ME 04333-0101  
Phone: (207) 287-4177

**MARYLAND**

Dept. of Assessments and Taxation  
301 West Preston Street, Room 809  
Baltimore, MD 21201-1459  
Phone: (44) Dept. of Assessments and Taxation  
301 West Preston Street, Room 809  
Baltimore, MD 21201-1459  
Phone: (410) 767-1179

**MASSACHUSETTS**

Secretary of State, UCC Division  
One Ashburton Place, Room 1711  
Boston, MA 02108  
Phone: (617) 727-2860

**MICHIGAN**

Michigan Dept. of State, UCC Unit  
PO Box 30197  
Lansing, MI 48909-7697  
Phone: (517) 322-1144

**MINNESOTA**

Secretary of State, UCC Division  
180 State Office Bldg.  
100 Constitution Avenue  
St. Paul, MN 55155-1299  
Phone: (651) 296-2803

**MISSISSIPPI**

Secretary of State  
Business Services Div., UCC Div.  
PO Box 136  
Jackson, MS 93205-0136  
Phone: (601) 359-1633

**MISSOURI**

Secretary of State, UCC Division  
600 W. Main Street, Rm 302  
Jefferson City, MO 65101  
Phone: (573) 751-2360

**MONTANA**

Secretary of State  
Business Services Bureau  
PO Box 202801  
Helena, MT 59620-2801  
Phone: (406) 444-3665

**NEBRASKA**

Secretary of State, UCC Division  
1305 State Capitol Bldg.  
PO Box 95104  
Lincoln, NE 68509  
Phone: (402) 471-4080

**NEVADA**

Secretary of State, UCC Division  
North Carson Street, #3  
Carson City, NV 89701-4786  
Phone: (702) 687-5203

**NEW HAMPSHIRE**

Secretary of State, UCC Section  
Room 204, State House  
107 North Main Street  
Concord, NH 03301  
Phone: (603) 271-3276

**NEW JERSEY**

Dept. of Revenue  
Central Filing, UCC Section  
Box 303  
Trenton, NJ 08625  
Phone: (609) 530-6426

**NEW MEXICO**

Secretary of State, UCC Division  
State Capitol Bldg., Room 420  
Santa Fe, NM 87501  
Phone: (505) 827-3600

**NEW YORK**

New York Dept. of State  
41 State Street  
Albany, NY 12231  
Phone: (518) 747-5418



**NORTH CAROLINA**

Secretary of State, UCC Division  
300 N. Salisbury St., Room 302  
Raleigh, NC 27546  
Phone: (919) 733-4205

**NORTH DAKOTA**

Secretary of State, UCC Division  
Capitol Bldg., 1st Floor  
600 E. Boulevard Avenue, Dept. 108  
Bismarck, ND 58505-0500  
Phone: (701) 328-3662

**OHIO**

Secretary of State, UCC Division  
30 E. Broad Street  
State Office Tower, 14th Floor  
Columbus, OH 43266-0416  
Phone: (614) 466-3623

**OKLAHOMA**

Oklahoma Central Filing Office  
320 Robert S. Kerr Avenue, Ste 107  
Oklahoma City, OK 73102  
Phone: (405) 713-1522

**OREGON**

Oregon Secretary of State  
Corporation Division—UCC Section  
Public Service Building  
255 Capitol Street NE, Ste 151  
Salem, OR 97310-1327  
Phone: (503) 986-2200

**PENNSYLVANIA**

Pennsylvania Dept. of State  
Corporation Bureau, UCC Section  
PO Box 8721  
Harrisburg, PA 17105-8721  
Phone: (717) 787-1057

**RHODE ISLAND**

Secretary of State, UCC Division  
100 North Main Street  
Providence, RI 02903  
Phone: (401) 222-3040

**SOUTH CAROLINA**

Secretary of State, UCC Division  
PO Box 11350  
Columbia, SC 29211  
Phone: (803) 734-2170

**SOUTH DAKOTA**

Secretary of State, UCC Division—Central Filing  
500 E. Capitol  
Pierre, SD 57501-5077  
Phone: (605) 773-4550

**TENNESSEE**

Secretary of State, Div. of Business Services  
James K. Polk Building, Ste 1800  
505 Deaderick Street  
Nashville, TN 37243-0306  
Phone: (615) 741-3276

**TEXAS**

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PO Box 13193  
Austin, TX 78711-3193  
Phone: (512) 475-2703

**UTAH**

State of Utah, UCC Division  
PO Box 146705  
Salt Lake City, UT 84114-6705  
Phone: (801) 530-4849

**VERMONT**

Secretary of State, UCC Division  
109 State Street  
Montpelier, VT 05609-1104  
Phone: (802) 828-2386

**VIRGINIA**

State Corporation Commission, Clerk's Office  
PO Box 1197  
Richmond VA 23218-1197  
Phone: (804) 371-9733

**VIRGIN ISLANDS**

Office of Lieutenant Governor—PO Box 450  
Corporation—UCC Division  
Charlotte Amalie, St. Thomas, VI 00802  
Phone: (809) 774-2991

**WASHINGTON**

Dept. of Licensing, UCC Section  
PO Box 9660  
Olympia, WA 98507-9660  
Phone: (360) 664-1530

**WEST VIRGINIA**

Secretary of State, UCC Dept.  
State Capitol Bldg, Room W131  
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Charleston, WV 25305  
Phone: (304) 558-6000

**WISCONSIN**

Wisconsin Dept. of Financial Institutions, UCC  
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PO Box 7847  
Madison, WI 53707-7847  
Phone: (608) 261-9548

**WYOMING**

Secretary of State, UCC Division

Capitol Building, Room 110

Cheyenne, WY 82002-0020

Phone: (307) 777-5372, 5334, or 5342