

General Provisions and Relation to Other Law Subcommittee: Article 1 Update

Uniform Law Commission and American Law Institute Vote to Amend Official Text of §1-301

As most readers will know, the 2001 revisions to Article 1 of the UCC have been very successful as a whole, with the Uniform Law Commission website tally¹ showing as of June 20, 2008, that 34 jurisdictions have enacted it. Most readers will also know that the 2001 revision to Article 1's choice-of-law rule, found in §1-105 prior to the revision and §1-301 after the revision, has been almost wholly unsuccessful. The new rule was intended to increase the autonomy of contracting parties by allowing them to select even a choice-of-law rule of a state that bears no relation to their contract. To protect consumers against over-reaching on the part of commercial parties, the new rule contained special provisions for transactions in which one of the parties was a consumer. Only the U.S. Virgin Islands has adopted the new rule; all of the other jurisdictions adopting revised Article 1 have retained former §1-105.

Responding to this situation, and endeavoring to ensure that the Uniform Commercial Code would continue to fulfill the purpose set forth in § 1-103 (a) (3), "to make uniform the law among the various jurisdictions," the Uniform Commercial Code's Permanent Editorial Board² recommended at its November 3, 2007, meeting that the official text of §1-301 be amended by returning to the language of former §1-105. Responding to this recommendation, on January 12, 2008, the Executive Committee of the Uniform Law Commission voted to accept the language set forth below, which is identical in substance to former §1-105 but does reflect a few stylistic changes:

§ 1-301. Territorial Applicability; Parties' Power to Choose Applicable Law

(a) Except as otherwise provided 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.

(b) In the absence of an agreement effective under subsection

¹ See http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ucc1.asp.

² The website for the American Law Institute describes the Permanent Editorial Board's responsibilities as follows:

The PEB assists in attaining and maintaining uniformity in state statutes governing commercial transactions by discouraging non-uniform amendments to the Uniform Commercial Code (UCC) by the states, and by approving and promulgating amendments to the UCC when necessary. The PEB is a joint committee of ALI and the National Conference of Commissioners on Uniform State Laws (NCCUSL).

http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=4. Thus, it makes sense that the Permanent Editorial Board would have originated this amendment, in an effort to respond to the states' rejection of the new choice-of-law rule.

(a), and except as provided in subsection (c), [the Uniform Commercial Code] applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of [the Uniform Commercial Code] specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 2-402;
- (2) Sections 2A-105 and 2A-106;
- (3) Section 4-102;
- (4) Section 4A-507;
- (5) Section 5-116;
- [(6) Section 6-103;]
- (7) Section 8-110;
- (8) Sections 9-301 through 9-307.

As a matter of ULC procedure, since no Commissioner filed an objection to the amendment within the requisite period for doing so, the amendment can be deemed to have been accepted by the ULC as a body. Notably, this amended version of §1-301 is almost identical to the version that the ULC has for some time been preparing and circulating to legislatures as a “hip pocket” amendment.

Since the Uniform Commercial Code is a collaborative effort between the American Law Institute and the ULC, what remained was for the ALI to consider the same amendment. The Institute’s Executive Committee approved the amendment on February 27, 2008; the Institute’s Council approved it at the Council meeting on May 19, 2008; and the membership of the Institute approved it after brief discussion during the Annual Meeting on May 21, 2008.

Thus, as of May 21, 2008, both bodies charged with drafting the Uniform Commercial Code have voted to revise the Official Text of §1-301 to reflect (with minor stylistic changes) the choice-of-law rule that is now in effect in 33 of the 34 jurisdictions that have adopted Revised Article 1.

Further information regarding pre-2001 §1-105, the version of §1-301 that was part of the 2001 Official Text of the Uniform Commercial Code, and the newly approved version of §1-301 that returns to the substantive rules of prior §1-105 can be found on the American Law Institute website, at <http://www.ali.org/doc/uccamendment.pdf>.