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# Uniform Commercial Code

5th Edition

## 统一商法典

[第5版]



®

Bradford Stone

【美】布拉德福德·斯通 著



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在美国法律教育界与律师实务界,“美国法精要”(Nutshell Series)是颇具特色的一套丛书。这套书最突出的特点当推它们的简捷明快、深入浅出。众多法学院的学生将这套书作为课外的辅助教材,由此掌握美国各主要部门法的精义;执业律师也经常借助这套书,以迅速了解自己尚未熟练的某些部门法,或者温习过去曾经学过的某些课程。

相信这套丛书也能赢得国内读者的欢迎。无论是法律专业的本科生、研究生,还是执业律师或其他人士,都能从这套丛书中获得有关美国法律的大量知识,对自己的学习和工作有所助益。此外,通过阅读原汁原味的英文来学习美国法律也应能提高读者的法律英语水平,促进与美国同行的直接对话与交流。

——许传玺

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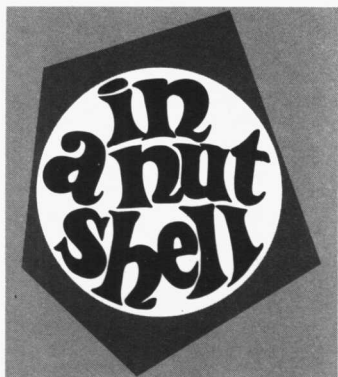
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**UNIFORM  
COMMERCIAL CODE  
IN A NUTSHELL**

**FIFTH EDITION**

By

**BRADFORD STONE**

Charles A. Dana Professor of Law  
Stetson University College of Law



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## 总序

许传玺\*

在美国法律教育界与律师实务界,这套“美国法精要”(Nutshell Series)是颇具特色的一套丛书。这套书最突出的特点当推它们的简捷明快、深入浅出。每种书均由富有教学经验的法学教授执笔,在三、四百页的篇幅内介绍某一法律部门的基本原理、主要法规和重点案例。

由于这些特点,这套丛书受到了无数美国读者的欢迎和喜爱。众多法学院的学生将这套书作为课外的辅助教材,由此掌握美国各主要部门法的精义。执业律师也经常借助这套书,以迅速了解自己尚未熟习的某些部门法,或者温习过去曾经学过的某些课程。

相信这套丛书也能赢得国内读者的欢迎。无论是法律专业的本科生、研究生,还是执业律师或其他人士,都能从这套丛书中获得有关美国法律的大量知识,对自己的学习和工作有所助益。此外,通过阅读原汁原味的英文来学习美国法律也应能提高读者的法律英语水平,促进与美国同行的直接对话与交流。

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\* 美国哈佛大学法博士(J. D.);耶鲁大学社会文化人类学博士;现任中国政法大学中美法学院院长、教授。

应原出版者的要求,这套丛书的国内版增加了中文前言,以介绍美国各部门法的概况、每种书的内容及原书作者等等。这些前言作者都是在美国受过专业教育或从事专门研究的法律学者甚或专家。相信他们的介绍会对读者有所帮助。

Happy reading!

1999年4月  
于哈佛法学院



## 前 言

李清池\*

统一商法典(Uniform Commercial Code)是美国法律演进历史中最引人注目的成就之一。虽然只是模范法典,统一商法典的影响却是相当深远,基本上为美国的 50 个州与哥伦比亚特区(路易斯安娜州没有全盘接受)、美属维京群岛和波多黎各分别采纳为正式的立法。可以说,统一商法典消除了美国境内因各州商法对州际交易规定不同而造成的障碍,实现了关于货物销售、票据、担保、信贷各领域法律的统一。

统一商法典源于早期的商人法,即贸易商业实践中普遍承认和适用于规范交易和解决纠纷的一套规则、惯例和习俗。从 17 世纪开始,这些商人法逐步被吸收融入英国普通法,至 19 世纪后期开始演化为成文法。由于经济和贸易的发展,美国内部统一州法的运动也在同一时间兴起,统一州法全国委员会(the National Conference of Commissioners on Uniform State Laws)在 1900 年前后制订了统一票据法和买卖合同法以及其它与商业交易相关的模范法典,如仓

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单法、提单法等等。这些法典大多被各州先后采纳为成文法。至 1940 年代,人们认识到,有必要修订上述的模范法典,以简化、理顺和更新商业交易法律,促进商业和贸易的发展。统一商法典即是酝酿于这样的社会背景中。

1940 年,统一州法全国委员会和美国法律研究院(the American Law Institute)联合发起统一商法典的编纂。法学教授卡尔·卢埃林(Karl Llewellyn)和后来成为其妻子的索伊亚·蒙特史科夫(Soia Mentschikoff)担纲领导法典的编纂;前者并负责起草买卖合同部分,后者负责担保部分。后来,这对夫妻因对统一商法典的贡献联袂入选 20 世纪最具影响力的美国法律人之列(见 American Lawyer 杂志 1999 年 12 月刊)。统一商法典第一个官方版本于 1951 年公布。此后历经 10 多年,法典为各州普遍接受。1961 年,统一商法典常任编辑委员会成立,主持法典的后续编纂。迄今为止,统一商法典历经了多次的增补修订,最新的一个官方版本公布于 2001 年。

顾名思义,统一商法典的内容基于商业交易的不同环节。法典分为 11 篇,以总则和各分则的形式,对实践中的商事规则和惯例进行了归纳和体系梳理,涉及货物销售合同、消费租赁、融资租赁、商业票据法、银行存款单据、资金转移、信用证、仓单、提单、投资证券和担保等方面的法律。在结构方面,统一商法典由两部分组成:法律条文和附注于条文的官方释解;后者意在阐述法条的背景和原理,其重要性不亚于条文本身。

统一商法典的诞生,以一个能不断自我补充的完整法典的形式,取代了美国此前的那些分散的商事统一立法。作为现实主义法学的代表人物,编纂者卡尔·卢埃林给法典烙上其思想的印迹。例如,法典偏好开放式的而非刚性的

规定,尽量避免拘泥于形式,要求对法典进行意图解释,支持法官在实践中使用一般法律原则来补充法典规定的不足。故此,虽名属法典,统一商法典既不是大陆法系传统意义上的法典,也不仅仅是简单地对普通法的汇编和系统化,其性质介于两者之间。一方面,法典的编纂融入了大陆法系法典的系统性、全面性和确定性的精神,另一方面,它依然贯穿着判例法的传统精神。

统一商法典的编纂和修订过程充分体现了其现实主义特征。法典并非由专门的立法机关组织编纂,只是向各州的立法机关推荐的一个建议性法律范本;它对各州的商法典并没有支配和统领关系,非经各州批准,不对该州产生法律效力。这种别具特色的法典编纂方式,既有效解决了普通法系判例法体系庞杂和缺乏系统性的问题,也在某些方面克服了大陆法系法典僵化和滞后的弊病。

基于统一商法典的庞杂和逾 800 页的规模,一本简明扼要的入门读物显然是有价值的。美国西方出版公司“美国法精要”(Nutshell Series)中的《统一商法典》即是以此为目的。本书虽为“精要”,却广泛讨论了商法典中几乎所有重要的问题,其中也不乏精深的见解。围绕着统一商法典,本书注重介绍了第二篇货物买卖合同、第三篇票据、第七篇仓单和存单、第九篇担保和第五款信用证等主要内容。对于每一部分的内容,作者都根据相应地条款加以解释说明。为了读者阅读方便,本书还附有一百多页统一商法典的条文索引。

本书作者布拉特福德·斯通教授兼事律师业务和教学研究,其丰富的经验和学识表现在对法典条文的深入浅出的阐释和交叉援引的扎实功力。此书的逻辑清晰和语言简明不罗嗦,实副其“精要”之名。另外,此书是过去 25 年内

5次“升级”的版本,既反映了统一商法典的最新发展,也说明了其权威和价值。

2004年1月

## For the next generation

Zachary  
Isaiah  
Christopher  
Madeline

The Child is Father of the Man;  
And I could wish my days to be,  
Bound each to each by natural piety.  
—William Wordsworth

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## PREFACE

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“If a statute is to make sense, it must be read in the light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense.” Karl N. Llewellyn, *The Common Law Tradition* 374 (1960).

“The Act should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Act as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.” Comment 1 to Uniform Commercial Code § 1-102.

“Moreover, this case would have been much easier for me to decide if the parties had begun their presentations with an appropriate explanation of the relevant provisions of the statute instead of an unstated assumption that is not entirely obvious.” Justice John Paul Stevens, 454 U.S. at 45.

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The official text (with comments) of the Uniform Commercial Code embodies more than eight-hundred pages. Its sweeping scope and complexities may appear to discourage summarizing into a nutshell format. Yet the need to view the Code with some perspective is manifest. This nutshell endeavors to meet this need.

At the outset, however, the following quote from Section 246 of McCormick's *Handbook of the Law of Evidence, Second Edition*, should be considered:

## PREFACE

“Too much should not be expected of a [summary of the sweeping body of law.] . . . The most it can accomplish is to furnish a helpful starting point for discussion of the problems, and a memory aid in recalling some of the solutions. But if [a summary] is to remain brief and understandable, it will necessarily distort some parts of the picture. Simplification has a measure of falsification.”

In order to minimize the distortion that comes with simplification, the following techniques have been employed:

First, wherever practicable the actual language of the Code and its comments have been “tracked,” even though it may not always have been expedient to indicate this affirmatively.

Second, every Code rule and comment stated is backed up by the relevant UCC citation. Accordingly, the reader—whether law student or practitioner—is given entrée to the Code itself so that an independent judgment may be made as to the rule and application under consideration. Further, the cite will afford ready entrée to a study in depth. For instance, once a relevant UCC cite is obtained, all reported case law construing the language can be located through such publications as the Uniform Laws Annotated—Uniform Commercial Code and the Uniform Commercial Code Reporting Service. The UCC cite also will give ready entrée to the massive legal literature that discusses the Code. On occasion this Nutshell will refer to J. White, R. Summers, *Handbook of the Law Under the Uniform Commercial Code* (5th ed., Student Edition, 2000) (cited as UCC Hornbook), R. Nordstrom, *Handbook of the Law of Sales* (1970) (cited as Sales Hornbook), and R. Henson, *Handbook on Secured Transactions Under the Uniform Commercial Code* (2d ed., 1979) (cited as Secured Transactions Hornbook) where it is believed such references are particularly helpful.

## PREFACE

Third, the purpose or policy of a rule under consideration is frequently stated and an example of the application of the rule is given. Remember: “[A rule] . . . with no purpose . . . is nonsense.” The Code Comments are the principal source for the purpose of the various UCC provisions. These Comments are intended not only to promote uniformity and safeguard against misconstruction but to “aid in viewing the Act as an integrated whole.” See the General Comment to the UCC.

Subsequent to the publication of the first edition, the 1978 UCC was promulgated. Other developments included the promulgation of the Restatement (Second) of Contracts, the enactment of the Bankruptcy Reform Act and the Magnuson-Moss Warranty Act. Further, a revised Uniform Consumer Credit Code was promulgated. The second edition reflected those developments.

The third edition was based upon the 1987 UCC which added Article 2A Leases. The edition also cited the Federal Expedited Funds Availability Act, the Federal Food Security Act, FTC Credit Practices Rules, and the Uniform Fraudulent Transfer Act.

The fourth edition was based on the 1990 Code. This Code (1) revised Article 3 (renaming it Negotiable Instruments), and (2) amended Article 4 Bank Deposits and Collections. Additionally, this edition contained the 1990 amendments to Article 2A Leases. The 1989 official text was also included. This text (1) added Article 4A Funds Transfers, and (2) contained a revised Article 6, renaming it Bulk Sales.

The fourth edition also cited, throughout Article 2 Sales, the United Nations Convention on Contracts for the International Sale of Goods (CISG). The United States and fifty-nine other



## PREFACE

countries are parties to the Convention, i.e., are “contracting states.”

The fifth edition is based on the 2001 Official Text. Included is (i) revised (1994) Article 8 (Investment Securities), (ii) revised (1995) Article 5 (Letters of Credit), and (iii) revised (2000) Article 9 (Secured Transactions) with conforming amendments to other Articles and errata and amendments to revised Article 9. Consequently, Parts Four and Five of this edition have been redrafted.

For a “Transactional Outline of Uniform Commercial Code,” complete with citations and keyed to this nutshell, see 15 West’s Legal Forms 509–561 (Appendix) (3rd ed. 2000).

[Note: See Uniform Electronic Transactions Act § 3(b)(2) (does not apply to UCC other than Articles 2 and 2A and §§ 1–107, 1–206) and § 16; Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. § 7001 to § 7031 (especially, §§ 7001(a) and (d)(4), 7002(a)(1) and (c), 7003(a)(3), 7021(a)(1) and (d)–(g).]

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December, 2001