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Gerald T. McLaughlin

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THE EVOLVING UNIFORM COMMERCIAL CODE: FROM INFANCY TO MATURITY TO OLD AGE

Gerald T. McLaughlin *

I. INTRODUCTION

Remember the mythological story of Oedipus and the Sphinx? The Sphinx asked Oedipus to solve the following riddle:

"[What] goes on four feet in the morning, on two at noonday, on three in the evening? Man," answered Oedipus. "In childhood he creeps on hands and feet; in manhood he walks erect; in old age he keeps himself with a staff."¹

Well in many ways, had Oedipus been a modern-day commercial lawyer and been asked to solve this same riddle, he might well have answered not "Man" but the "Uniform Commercial Code." This Essay will explain why such an answer is not as implausible as it might first appear. Part II shows that at the time of its initial drafting—its infancy if you will—the UCC did not represent a truly uniform commercial code. In fact, its drafters never envisioned the UCC to be a uniform commercial code. Part III shows that with recent additions and proposed revisions, the UCC is slowly developing into something that is much stronger and more vigorous than before—something that more fully approximates its name. Finally, part IV concludes that despite its growth and maturity, the UCC may not have a robust old age. Forces are at work that may weaken the UCC in the years ahead.

II. THE NON-UNIFORM COMMERCIAL CODE: INFANCY

At the time of its initial drafting, it was obvious that the UCC would not live up to its name. Even if the official text of the UCC had been enacted in all fifty states, it would not necessarily have resulted in a truly *uniform* commercial law in the United States. Furthermore, although it did govern many areas of what was traditionally viewed as commercial law (such as sales of goods and letters of credit), the UCC still failed to cover many important areas of commercial law. Given these gaps in cov-

* Dean and Professor of Law, Loyola Law School, Los Angeles.

1. EDITH HAMILTON, MYTHOLOGY 257 (1969).

erage, the UCC could not have plausibly claimed to represent a *comprehensive regulation of commercial law*. Finally, because it relied heavily on common-law precedents and subsequent case-law development, the UCC was not really a *code*—at least not in the traditional civil-law sense of that term.

A. *Lack of Uniformity*

Initially at least, the UCC could not have been expected to create a uniform commercial law in the United States. There were three main reasons for this: (1) the UCC's character as state (not federal) legislation; (2) the UCC's reliance on state common-law principles to supplement its provisions; and (3) the failure of its drafters to devise a mechanism to referee subsequent divergent judicial interpretations of the UCC.

1. State as opposed to federal legislation

Because the official text of the UCC had to be enacted in each of the several states, it was inevitable that legislatures would make non-uniform amendments to the official text during the process of state-by-state legislative enactment. This occurred when the Uniform Sales Act² and the Negotiable Instruments Law³ were enacted by the states prior to the UCC,⁴ and there was no reason to expect that the UCC would be afforded any better treatment. Subsequent events proved this to be true because every state has modified the official text of the UCC in one way or another.⁵ Congressional enactment of the UCC, of course, would have been preferable to achieve the goal of national uniformity, but enacting a federalized UCC would not have been politically possible forty years ago.⁶

2. UNIF. SALES ACT (1906) (superseded by U.C.C. art. 2).

3. UNIF. NEGOTIABLE INSTRUMENTS LAW (1896) (superseded by U.C.C. art. 3).

4. Both the Negotiable Instruments Law and the Uniform Sales Act were modified by the states. See JOSEPH D. BRANNAN, *THE NEGOTIABLE INSTRUMENTS LAW ANNOTATED* cxix-cxxii (4th ed. 1926); Warren L. Shattuck, *The Uniform Commercial Code—A Modernization of Commercial Law*, 35 WASH. L. REV. 398, 399-400 (1960).

5. See generally [State UCC Variations] U.C.C. Rep. Serv. 2d (Callaghan) (providing state-by-state analysis of variations in UCC provisions adopted).

6. See Robert Braucher, *Federal Enactment of the Uniform Commercial Code*, 16 LAW & CONTEMP. PROBS. 100, 104-12 (1951) (stating that federal enactment of UCC may cause difficulties in areas of state sovereignty, foreign relations, governmental contracts and federal courts' jurisdiction); Amelia H. Boss, *Federalization of Commercial Law*, 2 ALI-ABA COURSE OF STUDY: THE EMERGING NEW UNIFORM COMMERCIAL CODE 675 (1990) (providing explanation of issues concerning federalization of UCC).

2. State common-law supplementation

The UCC relies on state common law to supplement its provisions in two important respects. The UCC does not define key terms such as “offer,”⁷ “acceptance”⁸ and “possession,”⁹ thus requiring courts to utilize state common-law definitions of these terms when applying the Code. Similarly, section 1-103 provides that state common-law rules on a wide variety of questions, including estoppel and waiver, should be used to supplement UCC provisions unless a particular UCC provision displaces the common law.¹⁰ Given the differences in state common-law rules, the drafters of the UCC obviously chose to tolerate a degree of non-uniformity in its development.

3. Lack of a referee mechanism

It was inevitable that even if the official text of the UCC were uniformly adopted in each state, subsequent judicial interpretations of its text would have quickly eroded such uniformity. Although the drafters made uniformity of interpretation one of the underlying policies of the UCC,¹¹ it was unrealistic to expect that such uniformity would be achieved without some assistance. The drafters, however, did not create either a formal or an informal mechanism to monitor and referee divergent judicial interpretations of UCC provisions.

B. Not Comprehensively Commercial

The word commercial has as its root the Latin word *merx* which means “goods.”¹² The drafters’ decision to organize UCC coverage around the concept of “goods” created gaps in the comprehensiveness of the Code’s coverage. The first gap was caused by the limited number of “goods” transactions included within the scope of the Code. Sales of “goods” transactions, for example, were specifically included within the scope of the Code,¹³ but bailment, lease and gift transactions were not specifically included.

7. See, e.g., U.C.C. §§ 2-205 (1990) (firm offers), -206 (offer and acceptance in formation of contract).

8. See, e.g., *id.* §§ 2-206 (offer and acceptance in formation of contract), -207 (additional terms in acceptance or confirmation).

9. See, e.g., *id.* § 9-203 (attachment and enforceability of security interest).

10. *Id.* § 1-103.

11. *Id.* § 1-102(2)(c).

12. BLACK’S LAW DICTIONARY 990 (6th ed. 1990).

13. See U.C.C. §§ 2-101, -102.

The second gap was caused by the limited size of a "goods" transaction included within the scope of the Code. For example, many sales of "goods" contracts include a service component—the installation of new copper piping in a house involves both the sale of "goods" (the copper piping) and a sale of services (the installation of the piping). The majority of courts apply the so-called "predominant factor" test to these mixed goods/services contracts. If the "predominant factor" of the contract is the sale of the "goods" component, the Code will be applied to the whole contract—to both the "goods" and the services components.¹⁴ But if, on the other hand, the "predominant factor" of the contract is the services component, non-Code law will be applied to the whole contract—to both the "goods" and the services components.¹⁵ In some situations, a minority of courts apply the Code just to the "goods" portion of a contract and apply non-Code law to the "non-goods" portion of a contract.¹⁶ Adding further to these coverage difficulties, we see that while the Code may not be applied to the "goods" portion of a services contract, the Code will be applied to a negotiable promissory note used in a transaction that has absolutely nothing to do with "goods."¹⁷

The third gap is caused by the inconsistencies in the types of "non-goods" transactions included within the scope of the Code. A sale of pure services (non-goods) is not included within the Code, but a sale of investment securities¹⁸ and certain choses in action¹⁹ (also non-goods) are included within the scope of the Code. The Code covers a standby letter of credit used to pay a sum of money in a real estate transaction,²⁰ but it does not cover a loan secured by real estate.²¹ As these various

14. See, e.g., *Murphy v. Spelts-Schultz Lumber Co.*, 481 N.W.2d 422, 429 (Neb. 1992) (using predominant factor test to determine that building contract containing provisions for both materials and design services was predominantly one for goods).

15. See, e.g., *Herman v. Bonanza Bldg., Inc.*, 390 N.W.2d 536, 542 (Neb. 1986) (stating that UCC was not applicable because predominant purpose of transaction was erection of building and not transfer of goods).

16. See *Foster v. Colorado Radio Corp.*, 381 F.2d 222 (10th Cir. 1967), in which the court considered a breach of contract action in the sale of a radio station. The contract contained provisions relating to goods and non-goods. *Id.* at 225-26. The court applied the UCC to the goods provisions and common law to the non-goods provisions. *Id.* at 226-27.

17. U.C.C. §§ 3-102(a) ("This Article applies to negotiable instruments."), -104(a) (defining negotiable instrument).

18. *Id.* art. 8; cf. *id.* § 2-105 (definition of goods specifically excludes investment securities).

19. *Id.* § 9-102(1)(b) (sales of accounts and chattel paper). A sale of general intangibles, however, is not included within the scope of the Code.

20. See *New York Life Ins. Co. v. Hartford Nat'l Bank & Trust Co.*, 378 A.2d 562 (Conn. 1977); *Chiat/Day Inc. v. Kalimian*, 483 N.Y.S.2d 235 (App. Div. 1984).

21. Cf. U.C.C. § 9-104(j).

gaps in Code coverage indicate, the UCC fell far short of creating a truly comprehensive national commercial code.

C. *Not a Code*

It has been pointed out that the UCC is not a true code in the civil-law sense of that term.²² Civil-law codes are first and foremost preemptive.²³ They wipe away past legislation and create a fresh start.

The UCC does not pretend to do this—in fact it takes the opposite approach. In section 1-103, for example, the drafters state that to the extent that a UCC provision does not displace the principles of law and equity, these principles remain good law.²⁴ One commentator graphically illustrated the non-preemptive nature of the UCC by analogizing UCC provisions to islands floating in the sea of the common law. If there is no land, the sea of the common law takes over.

Similarly, this use of pre-Code law to supplement UCC provisions creates a second difference between the UCC and civil-law codes. A civil-law code systematically regulates its own area of coverage, providing general principles to be applied to topics not specifically addressed in the text. The UCC's approach is different. Instead of providing general principles to be applied to topics not specifically covered by the text, the UCC relies on state common law to fill these gaps in coverage. One commentator has called the UCC a "common law code" to differentiate it from the more traditional civil-law code.²⁵

III. THE EVOLUTION OF THE UNIFORM COMMERCIAL CODE: MATURITY

As demonstrated in part II, initially at least, the UCC failed to live up to its name. In recent years, however, due mainly to the addition of new articles to the Code and proposed revisions to existing articles, the Code is beginning to evolve into a truly national commercial code. Part III explains this evolution.

22. Grant Gilmore, *Article 9: What It Does for the Past*, 26 LA. L. REV. 285, 285-86 (1966); Grant Gilmore, *Legal Realism: Its Cause and Cure*, 70 YALE L.J. 1037, 1042-43 (1961) [hereinafter Gilmore, *Legal Realism*].

23. Gilmore, *Legal Realism*, *supra* note 22, at 1042.

24. U.C.C. § 1-103 states: "Unless displaced by the particular provisions of this Act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions." *Id.*

25. Gilmore, *Legal Realism*, *supra* note 22, at 1044-45.

A. *The Uniformity of the UCC*

As demonstrated in part II of this Essay, the character of the UCC as state, rather than federal legislation prevented the emergence of a truly uniform commercial law throughout the United States. State-by-state enactment of the UCC inevitably led to the addition of non-uniform amendments to the official UCC text. Reliance on common-law rules to supplement UCC provisions also assured state-by-state variations. Furthermore, the failure of the UCC drafters to provide a mechanism limiting divergent state judicial interpretations of UCC provisions contributed to this lack of national uniformity.

A congressionally enacted UCC, of course, would have been the most effective way to achieve a truly uniform commercial law regime in the United States. Despite the presumed benefits of such a federalized UCC, Congress has not made any serious movement towards enacting a national commercial code. Where the interest in national uniformity has been particularly compelling, however, there have been specific "federalizations" of commercial law issues.²⁶

In order to help achieve this goal, the Permanent Editorial Board (PEB) of the UCC recently took a modest step toward making the UCC more uniform. In 1987 the PEB resolved to issue supplemental UCC commentaries (PEB Commentaries), in which the PEB would state, *inter alia*, a preferred resolution of a UCC issue on which judicial or scholarly opinion has differed.²⁷ These PEB Commentaries represent an attempt to promote uniformity not only "after the fact," by trying to harmonize existing divergent UCC interpretations, but also "before the fact," by applying UCC principles to new or changed circumstances. Since its 1987 resolution, nine PEB Commentaries have been issued.²⁸

The evolution of a more uniform UCC is assisted not only by these PEB Commentaries, but also by the UCC's own text. Over the years, UCC provisions have influenced the substance of state common-law rules—particularly state common-law contract rules.²⁹ This has had the effect of narrowing the gap between the two sets of legal rules. These two

26. See Regulation J, 12 C.F.R. pt. 210 (1992); Regulation CC, 12 C.F.R. pt. 229 (1990); Magnuson-Moss Consumer Products Warranty Act, 15 U.S.C. §§ 2301-2312 (1988); Consumer Credit Protection Act, 15 U.S.C. §§ 1601-1677 (1988 & Supp. II 1990).

27. *PEB Resolution on Purposes, Standards and Procedures for PEB Commentary to the UCC*, [PEB Commentaries] U.C.C. Rep. Serv. 2d (Callaghan) vii (Mar. 14, 1987).

28. *Id.* at 1.

29. See *Data Processing Serv., Inc. v. L.H. Smith Oil Corp.*, 492 N.E.2d 314, 318-20 (Ind. Ct. App. 1986) (using UCC definitions to determine whether contract should be governed by UCC or state common-law contract principles).

developments can be seen as small but encouraging steps towards achieving greater commercial law uniformity throughout the United States.

B. The Comprehensiveness of UCC Coverage

When the UCC was initially enacted, it did not cover all forms of commercial transactions. During the last decade, however, the enactment of Articles 2A and 4A have filled several important gaps in the UCC's coverage. Article 2A governs leases of goods,³⁰ and Article 4A governs electronic funds transfers.³¹

Similarly, the ongoing process of revising existing UCC articles promises to enlarge the scope of these articles. For example, the Article 9 study committee recently recommended including deposit accounts and most forms of tort claims within the scope of a revised Article 9 and widening the coverage of Article 9 to cover credit card receivables.³² The drafters have enlarged the scope of Article 8 to encompass uncertificated securities,³³ and the recent revision of Article 3 establishes, for the first time, rules governing cashier's checks.³⁴

The addition of the two new UCC articles and the impending revisions of the current articles enlarge the coverage of the UCC, making it more comprehensively commercial. The expanding coverage, however, has not been fortuitous. While the drafters of the UCC did not provide a mechanism for keeping the UCC uniform, they did create mechanisms by which UCC provisions could grow and adapt to changing marketplace practices. The two most important mechanisms are the open-textured nature of the UCC's default rules and the primacy that the UCC gives to the agreement of the parties.

1. "Open-textured" provisions

UCC provisions tend to be open-textured in their drafting—that is, they are drafted in such a way that they can easily accommodate future changes in marketplace practices. This ability to accommodate future marketplace practices has always been the hallmark of merchant law—of which the UCC is a part. The UCC's adaptability can most clearly be seen in its definitions and scope sections.

30. U.C.C. § 2A-102.

31. *Id.* §§ 4A-102, -104(a).

32. PEB STUDY GROUP UNIFORM COMMERCIAL CODE ARTICLE 9 REPORT, PEB FOR THE UCC 48-49, 58-59, 68-71 (1992).

33. *See* U.C.C. § 8-102(b).

34. *See id.* § 3-104(g); *id.* § 3-104 cmt. 4.

a. definitions

Normally, UCC definitions are purposely left open-ended—precisely to allow the definition to accommodate itself to new business practices. Article 9, for example, defines “general intangibles” as “any personal property . . . other than goods, accounts, chattel paper, documents, instruments, and money.”³⁵ The open-ended nature of this definition is readily apparent. Whenever a new or unusual form of personal property is used by a lender as collateral for a loan, it will be deemed to be a general intangible unless it can fit into some other definition of Article 9 collateral.³⁶ But even these other Article 9 definitions of collateral are open-ended in their drafting. The Article 9 definition of an “instrument,” for example, includes not only a negotiable instrument but “any other writing which evidences a right to the payment of money and . . . is of a type which is in the ordinary course of business transferred by delivery with any necessary indorsement or assignment.”³⁷ This language sweeps into its orbit new forms of transferable rights to payment.

b. scope sections

Like UCC definitions, UCC scope sections were drafted to permit growth. For example, UCC section 2-102 states that Article 2 applies to “transactions in goods.”³⁸ Although Article 2 was called the “Sales Article,”³⁹ the drafters obviously invited the courts, through the use of the word “transactions” in section 2-102, to apply Article 2 provisions to nonsales transactions.⁴⁰ Many courts have acted on this invitation and have extended Article 2 provisions by analogy to lease transactions.⁴¹

35. *Id.* § 9-106.

36. See *In re George*, 85 B.R. 133 (Bankr. D. Kan. 1988) (holding that entitlement payments to farmer are general intangibles), *aff'd*, 119 B.R. 800 (D. Kan. 1990); *Underground Flint, Inc. v. Viro, Inc.*, 80 B.R. 87 (W.D. Mich. 1982) (holding that liquor license is general intangible).

37. U.C.C. § 9-105(i).

38. *Id.* § 2-102.

39. See *id.* § 2-101.

40. *Id.* §§ 2-101, -102 & cmt.

41. See *United Van Lines v. Hertz Penske Truck Leasing, Inc.*, 710 F. Supp. 283 (W.D. Wash. 1989); *In re Pacific Sunwest Printing*, 6 B.R. 408 (Bankr. S.D. Cal. 1980); *Hill v. Bentco Leasing, Inc.*, 708 S.W.2d 608 (Ark. 1986); *Advanced Computer Sales, Inc. v. Sizemore*, 366 S.E.2d 303 (Ga. 1988); *Walter E. Heller & Co. v. Convalescent Home of First Church*, 365 N.E.2d 1285 (Ill. App. Ct. 1977); *Todd Equip. Leasing Co. v. Milligan*, 395 A.2d 818 (Me. 1978); *USM Corp. v. Arthur D. Little Sys., Inc.*, 546 N.E.2d 888 (Mass. App. Ct. 1989); *Industralease Automated & Scientific Equip. Corp. v. R.M.E. Enters., Inc.*, 396 N.Y.S.2d 427 (1977); *Baldwin v. National Safe Depository Corp.*, 697 P.2d 587 (Wash. Ct. App. 1985).

This process of analogical application of Article 2 sales rules to lease transactions was instrumental in the ultimate inclusion of Article 2A in the official text of the UCC.⁴² First, application of Article 2 rules to lease transactions symbolically claimed the area of personal property leasing for the UCC. Second, by pointing out the many similarities between sales and lease transactions, this process of analogical application of Article 2 rules to lease transactions persuaded many that a new UCC article on leases made more sense than a free-standing personal property leasing act.⁴³

The scope section of Article 5 on letters of credit also demonstrates this same adaptive pattern.⁴⁴ Although Article 5 was drafted with commercial letters of credit primarily in mind,⁴⁵ the open-textured definition of a "letter of credit" allowed courts to apply Article 5 rules to new forms of letters of credit that appeared in the marketplace.⁴⁶

2. Agreement of the parties

UCC section 1-102(3) states a fundamental principle of UCC construction. According to this provision, "[t]he effect of provisions of [the UCC] may be varied by agreement" except in several specified circumstances.⁴⁷ UCC section 1-201(3) defines agreement broadly to include "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."⁴⁸ The UCC was constructed as a series of "default rules"—standardized rules that will be applied to a transaction absent a contrary agreement between the parties to the transaction. Because a contrary agreement between the parties will include applicable usages of trade, UCC default provisions must, therefore, yield to any contrary usages of trade.⁴⁹ This primacy given by the UCC to the agree-

42. *Id.* § 2A-101 cmt.

43. The National Conference of Commissioners on Uniform State Laws initially proposed a Personal Property Leasing Act in response to the need for regulating the lease of goods. *See id.* The Act, however, was shelved after it was determined that Article 2A (Leases) would be a better alternative. *Id.*

44. *Id.* § 5-102.

45. Commercial letters of credit involving the international sale of goods are centuries old; standby letters of credit involving loan and other nonsales of goods transactions are of recent vintage. *See* JOHN F. DOLAN, *THE LAW OF LETTERS OF CREDIT* ¶ 1.01 (2d ed. 1991); H.C. GUTTERIDGE & MAURICE MEGRAH, *THE LAW OF BANKERS' COMMERCIAL CREDITS* 15 (7th ed. 1984).

46. *See* U.C.C. § 5-102(c); *id.* § 5-102 cmt. 1.

47. *Id.* § 1-102(3).

48. *Id.* § 1-201(3).

49. *Id.*

ment between the parties (and therefore inferentially to usages of trade) allows the UCC to adapt easily to new marketplace practices.

C. *The Nature of the UCC as a Code*

In the strict technical sense, the UCC is no more a code today than it was forty years ago. Unlike a civil-law code, the UCC is not preemptive—it does not wipe away pre-Code law. On the contrary, the UCC uses pre-Code law to fill gaps in its coverage. Similarly, the UCC does not pretend to represent a systematic regulation of all aspects of commercial law. In 1993 there are still areas of commercial law not covered by the UCC.⁵⁰

The fact that the UCC is neither preemptive nor systematic in its coverage has not caused major problems. Consider the nonpreemptive nature of the UCC. A preemptive civil-law code does not rely for its interpretation on prior law—presumably because the code rules are thought to represent a more modern approach to regulation. The UCC relies not so much on *pre-Code* law as *non-Code* law to fill gaps in its coverage. This distinction is important. UCC section 1-103 states that “[u]nless displaced by the particular provisions of [the UCC], the principles of law and equity, including the law merchant . . . shall supplement [the UCC’s] provisions.”⁵¹ In our legal system, the principles of law and equity are not static; they are constantly growing and developing. Thus, the drafters of the UCC chose to supplement its provisions with bodies of rules that are themselves constantly being modernized and, one should not forget, constantly being influenced by the philosophy of the UCC itself. Thus, the fact that the UCC is not preemptive should not be equated with a reliance on outmoded legal rules to supplement its provisions.

Just as it is not preemptive, the UCC also is not systematic in its coverage. Each article covers a discrete type of mercantile transaction—sales, negotiable instruments, letters of credit and so forth. But as we have seen earlier, the open-textured nature of the UCC’s definitions and scope sections have allowed the UCC to adapt to new developments in the marketplace and, in some cases, to provide regulatory structures not originally covered by a Code article. This structural elasticity has made the admittedly non-systematic nature of the UCC less problematic than it might have been.

50. See RESTATEMENT OF LAW OF SURETYSHIP § 3 cmt. a (Tent. Draft No. 1, 1992) (ALI) (noting that UCC only covers suretyship relations created by negotiable instruments).

51. U.C.C. § 1-103.

IV. THE UCC IN THE DECADES AHEAD: OLD AGE

How will the UCC fare in the decades ahead? Although it is always dangerous to act as a prophet, it seems that the UCC will begin to play a diminishing role in mercantile transactions in the years ahead. There are two primary reasons for this: (1) increased international trade; and (2) the growing implications of third-party rights in commercial transactions.

A. Increased International Trade

In 1960 exports and imports constituted 10.5% of the United States gross domestic product.⁵² Twenty-five years later in 1985, exports and imports had grown to 23.3% of the gross domestic product.⁵³ This increased international trade has inevitably encouraged efforts to develop international conventions and model laws to regulate this commerce in lieu of using the purely domestic legislation of any one country. The Convention on the International Sale of Goods⁵⁴ was a successful effort to develop a special set of rules for international sales of goods contracts.⁵⁵ Other international efforts are underway to harmonize the law of negotiable instruments, electronic funds transfers and letters of credit⁵⁶—to name but a few. This movement towards creating an international commercial law regime will undoubtedly continue. The UCC was so successful in the United States precisely because, as a country, we share both a common legal tradition and a common core of social values. No such common legal tradition or common core of social values exists that would allow for the acceptance of the UCC worldwide.

B. The Growing Implication of Third-Party Rights in Commercial Transactions

Dean Robert Clark of Harvard Law School has observed that the gradual increase in wealth during the last decades has led people to demand a higher order of rights—one of which is the right to a clean envi-

52. Robert C. Clark, *Why So Many Lawyers? Are They Good or Bad?*, 61 FORDHAM L. REV. 275, 288 (1992) (citing COUNCIL OF ECONOMIC ADVISORS, 1989 ANN. REP. B-1, B-8).

53. *Id.* (citing COUNCIL OF ECONOMIC ADVISORS, 1989 ANN. REP. B-1, B-8).

54. United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, S. TREATY DOC. NO. 9, 98th Cong., 1st Sess. (1983), reprinted in 52 Fed. Reg. 6264 (1987).

55. *Id.*

56. See, e.g., United Nations General Assembly: Report of the Working Group on International Contract Practices on the Work of its Sixteenth Session, U.N. GAOR 9th Comm., 25th Sess., U.N. Doc. A/CN.9/358 (1992).

ronment.⁵⁷ Responding to demands for higher order rights is complicated, requiring "elaborate relationships among people and organizations."⁵⁸ These elaborate relationships, he points out, require structuring by sets of rules that cannot be derived from the marketplace.⁵⁹ Parties that make a contract for the manufacture and sale of chemicals can structure a contractual set of rules governing their relationship as seller and buyer, but cannot easily structure a set of rules to deal with the potential environmental impact of the manufacture of the chemicals. These rules are best created by government. As commercial transactions (such as sales and financing transactions) are viewed more and more as implicating this higher order of rights—particularly health and environmental rights—inevitably the private agreement of the parties will be restricted by governmental rules enforcing this higher order of rights. In such a regime, the realm of freedom of contract and marketplace default rules—two hallmarks of the UCC—will most likely have diminished importance.

V. CONCLUSION

If a modern-day Oedipus had answered "the UCC" to the riddle of the Sphinx, the answer would have had some plausibility. In its infancy, the UCC did not constitute a truly uniform and comprehensively commercial code. But as it grew to maturity, the UCC more and more began to live up to its name—particularly as the scope of its coverage began to expand. The UCC, however, may not be able to look forward to a useful and respected old age. The globalization of commerce and the growing complexity of commercial transactions will most likely translate into a diminished importance for the UCC in the decades ahead.

57. Clark, *supra* note 52, at 291.

58. *Id.*

59. *Id.*