DISTRICT OF COLUMBIA

OFFICIAL CODE

TITLE 28.

COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

ARTICLE 7.

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

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DISTRICT OF COLUMBIA OFFICIAL CODE

ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

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ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

PART 1. GENERAL.

§ 28:7-101. SHORT TITLE.

This article shall be known and may be cited as Uniform Commercial Code -- Documents of Title.

(Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

This Article is a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and embraces also the provisions of the Uniform Sales Act relating to negotiation of documents of title.

The only substantial omissions of material covered in the previous uniform acts are the criminal provisions found in the Warehouse Receipts and Bills of Lading acts. These criminal provisions are inappropriate to a Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating to frauds.

The Article does not attempt to define the tort liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. For important classes of bailees, liabilities in case of loss, damage or destruction, as well as other legal questions associated with particular documents of title, are governed by federal statutes, international treaties, and in some cases regulatory state laws, which supersede the provisions of this Article in case of inconsistency. See Section 7-103.

Prior Codifications

1981 Ed., § 28:7-101.

1973 Ed., § 28:7-101.

§ 28:7-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (section 28:1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for

whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiated" section 28:7-501.

"Person entitled under the document" section 28:7-403(4).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Contract for sale" section 28:2-106.

"Overseas" section 28:2-323.

"Receipt" of goods section 28:2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(vv), 44 DCR 1271.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 76, Uniform Sales Act; Section 58, Uniform Warehouse Receipts Act; Sections 1 and 53, Uniform Bills of Lading Act.

Changes

Applicable definitions from the uniform acts have been consolidated and revised; definition of delivery order is new.

Purposes of Changes and New Matter

1. "Bailee" was not defined in the old uniform acts. It is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when he does not have it he is bound by sections of this Article which declare the "bailee's" obligations. (See definition of "Issuer" in this section and Sections 7-203 and 7-301 on liability in case of non-receipt.)

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) eliminates the requirement of the Uniform Warehouse Receipts Act that the issuing warehouseman be "lawfully engaged" in business. The warehouseman's compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article. Certainly the issuer's violations of law should not diminish his responsibility on documents he has put in commercial circulation. The Uniform Warehouse Receipts Act requirement that the warehouseman be engaged "for profit" has also been eliminated in view of the existence of state operated and co-operative warehouses. But it is still essential that the business be storing goods "for hire" (Section 1-201 and this section). A person does not become a warehouseman by storing his own goods.

3. Delivery orders, which were included without qualification in the Uniform Sales Act definition of document of title, must be treated differently in this consolidation of provisions from the three uniform acts. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods.

Cross References

Point 1: Sections 7-203 and 7-301.

Point 2: Sections 1-201 and 7-203.

See general comment to document of title in Section 1-201.

Definitional Cross References

"Bill of lading". Section 1-201.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Receipt of goods". Section 2-103.

"Right". Section 1-201.

"Warehouse receipt". Section 1-201.

"Written". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-102.

1973 Ed., § 28:7-102.

Legislative History of Laws

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28:7-103. RELATION OF ARTICLE TO TREATY, STATUTE, TARIFF, CLASSIFICATION OR REGULATION.

To the extent that any treaty or statute of the United States, regulatory statute of the District or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

1. To make clear what would of course be true without the Section, that applicable Federal law is paramount.

2. To make clear also that *regulatory* state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of different values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the Article and are controlling on the matters which they cover. Notice that the reference is not only to such statutes, but to tariffs, classifications and regulations filed or issued pursuant to them.

Cross References

Sections 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, 7-403.

Definitional Cross Reference

"Bill of lading". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-103.

1973 Ed., § 28:7-103.

§ 28:7-104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE RECEIPT, BILL OF LADING OR OTHER DOCUMENT OF TITLE.

(1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) If by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) Where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a

written order signed by the same or another named person.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 27 and 76, Uniform Sales Act; Sections 2, 3, 4, 5 and 59, Uniform Warehouse Receipts Act; Sections 2, 3, 4, 5 and 53, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

This Article deals with a class of commercial paper representing commodities in storage or transportation. This "commodity paper" is to be distinguished from what might be called "money paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and "investment paper" dealt with in the Article of this Act on Investment Securities (Article 8). The class of "commodity paper" is designated "document of title" following the terminology of the Uniform Sales Act Section 76. Section 1-201. The distinctions between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the Article, in that the holder of negotiable documents may acquire more rights than his transferor had (See Section 7- 502).

A document of title is negotiable only if it satisfies this section. "Deliverable on proper indorsement and surrender of this receipt" will not render a document negotiable. Bailees often include such provisions as a means of insuring return of non-negotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsections (1)(a) and (2) make it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person.

Cross Reference

Section 7-502.

Definitional Cross References

"Bearer". Section 1-201.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Overseas". Section 2-323.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-104.

1973 Ed., § 28:7-104.

§ 28:7-105. CONSTRUCTION AGAINST NEGATIVE IMPLICATION.

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

To avoid any impairment, for example, of any common-law right of indemnity a warehouseman may have corresponding to Section 7-301(5), or of any contractual security interest a carrier might have corresponding to Section 7-209(2).

Cross References

Parts 2 and 3 of Article 7.

Prior Codifications

1981 Ed., § 28:7-105.

1973 Ed., § 28:7-105.

PART 2. ISSUE-ISSUER.

§ 28:7-201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER GOVERNMENT BOND.

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 1, Uniform Warehouse Receipts Act.

Changes

Provision added to cover storage under government bond or under licensing statute.

Purposes

It is not intended by reenactment of subsection (1) to repeal any provisions of special licensing or other statutes regulating who may become a warehouseman. See Section 10-103. Subsection (2) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 26. Limitations on the transfer of the receipts and criminal sanctions for violation of such limitations are not impaired. Section 7- 103. Compare Section 7-401(d) on the liability of the issuer in such cases.

Cross References

Sections 7-103, 7-401, 10-103.

Definitional Cross References

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-201.

1973 Ed., § 28:7-201.

§ 28:7-202. FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS; OPTIONAL TERMS.

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) The rate of storage and handling charges, except that where goods are stored under a field

warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by his authorized agent;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 28:7- 209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this subtitle and do not impair his obligation of delivery (section 28:7-403) or his duty of care (section 28:7-204). Any contrary provisions shall be ineffective.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 2, Uniform Warehouse Receipts Act.

Changes

Exemption for field warehouse receipts added in subsection (2)(e).

Purposes

To make clear that the formal requirements of the Uniform Warehouse Receipts Act are continued but not to displace particular legislation requiring other or different specifications of form. See Sections 7-103 and 10-103. This section does not require that a receipt be issued but states formal requirements for those which are issued.

Cross References

Sections 7-103 and 10-103.

Definitional Cross References

"Bearer". Section 1-201.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Security interest". Section 1-201.

"Term". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

"Written". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-202.

1973 Ed., § 28:7-202.

§ 28:7-203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

(Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 20, Uniform Warehouse Receipts Act.

Changes

New section confined to problem of non-receipt and misdescription.

Purposes of Changes and New Matter

This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of his principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross References

Sections 7-301 and 7-203.

Definitional Cross References

"Conspicuous". Section 1-201.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Notice". Section 1-201.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-203.

1973 Ed., § 28:7-203.

§ 28:7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSEMAN'S LIABILITY.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable: Provided, however, That such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) Omitted.

(Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 3 and 21, Uniform Warehouse Receipts Act.

Changes

Consolidated and rewritten; material on limitation of remedy is new.

Purposes of Changes

The old uniform acts provided that receipts could not contain terms impairing the obligation of reasonable care. Whether this is violated by a stipulation that in case of loss the bailee's liability is limited to stated amounts has been much controverted. The section is intended to eliminate that controversy by setting forth the conditions under which liability is so limited. However, as subsection (4) [Not adopted in Minnesota, see Minnesota Code Comment, supra] makes clear, the states as well as the federal government may supplement this section with more rigid standards of responsibility for some or all bailees.

Cross References

Sections 7-103 and 10-103.

Definitional Cross References

"Action". Section 1-201.

"Agreed". Section 1-201.

"Goods". Section 7-102.

"Reasonable time". Section 1-204.

"Sign". Section 1-201.

"Term". Section 1-201.

"Value". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

"Written". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-204.

1973 Ed., § 28:7-204.

§ 28:7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

The typical case covered by this section is that of the warehouseman-dealer in grain, and the substantive question at issue is whether in case the warehouseman becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouseman. Moreover, on default of the warehouseman, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces him completely to the status of general creditor in a situation where there was very little he could do to guard against the loss. Compare 15 U.S.C. Section 714p, enacted in 1955.

Cross References

Sections 2-403 and 9-307.

Definitional Cross References

"Buyer in ordinary course of business". Section 1-201.

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible" goods. Section 1-201.

"Goods". Section 7-102.

"Value". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-205.

1973 Ed., § 28:7-205.

§ 28:7-206. TERMINATION OF STORAGE AT WAREHOUSEMAN'S OPTION.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 28:7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 34, Uniform Warehouse Receipts Act.

Changes

Rewritten and expanded to define the warehouseman's right to terminate the storage not only where the goods are perishable or hazardous as in Uniform Warehouse Receipts Act, Section 34, but also for any other reason including decline in value of the goods imperilling the warehouseman's security for charges.

Purposes of Changes

1. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouseman's power to terminate the bailment, since it would be commercially intolerable to allow warehousemen to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (1) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

2. In permitting expeditions disposition of perishable and hazardous goods Uniform Warehouse Receipts Act, Section 34, made no distinction between cases where the warehouseman knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (2) and (3) distinguish between the two situations.

3. Protection of his lien is the only interest which the warehouseman has to justify summary sale of perishable

goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouseman's security.

4. The right to order removal of stored goods is subject to provisions of the public warehousing laws of some states forbidding warehousemen from discriminating among customers. Nor does the section relieve the warehouseman of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such *regulatory* statutes and the regulations under them remain in force and operative. Sections 7-103, 10-103.

Cross References

Sections 7-103, 7-403, 10-103.

Definitional Cross Reference

"Delivery". Section 1-201.

"Document". Section 7-102.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Notice". Section 1-201.

"Notification". Section 1-201.

"Person". Section 1-201.

"Reasonable time". Section 1-204.

"Value". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-206.

1973 Ed., § 28:7-206.

§ 28:7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 22, 23 and 24, Uniform Warehouse Receipts Act.

Changes

Consolidated and revised; holders of overissued receipts permitted to share in mass of fungible goods.

Purposes of Changes

No change of substance is made other than the explicit statement that holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible" goods. Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-207.

1973 Ed., § 28:7-207.

§ 28:7-208. ALTERED WAREHOUSE RECEIPTS.

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority, may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 13, Uniform Warehouse Receipts Act.

Changes

Generally revised and simplified; explicit treatment of the situation where a blank in an executed document is filled without authority.

Purposes of Changes

1. The execution of warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former.

2. An unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of his liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouseman.

Definitional Cross References

"Issuer". Section 7-102.

"Notice". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-201.

"Warehouse receipt". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-208.

1973 Ed., § 28:7-208.

§ 28:7-209. LIEN OF WAREHOUSEMAN.

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (Article 9).

(3)(a) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 28:7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

(Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 8, 29 DCR 309.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 27 through 32, Uniform Warehouse Receipts Act.

Changes

Rewritten.

Purposes of Changes

1. Subsection (1) defines the warehouseman's statutory lien. A specific lien attaches automatically, without express notation on the receipt, to goods stored under a non-negotiable receipt. That lien is limited to the usual charges arising out of a storage transaction; by notation on the receipt it can be made a general lien extending to like charges in relation to other goods. The same rules apply where the receipt is negotiable, except that as against a holder by due negotiation the lien is limited to the amount or rate specified on the receipt, or, if none is specified, to a reasonable charge for storage of the specific goods after the date of the receipt.

2. Subsection (2) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage or transportation, as where the bailee assumes the role of financer or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. Compare Sections 9-102(2) and 9-310. It is governed in all respects by Article 9, except that subsection (2) requires that the receipt specify a maximum amount and limits the security interest to the amount specified.

3. Subsections (1) and (2) validate the lien and security interest "against the bailor." As against third parties, subsection (3)(a) continues the rule under the prior uniform statutory provision that to validate the lien the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be subjected to a lien or security interest arising out of a deposit of his goods by a thief. The warehouseman may be protected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under Section 7-503. Where the third party is the holder of a security interest, the rights of the warehouseman depend on the priority given to a hypothetical bona fide pledgee by Article 9, particularly Section 9-312. Thus the special priority granted to statutory liens by Section 9-310 does not apply to liens under subsection (1) of this section, since subsection (3) "expressly provides otherwise" within the meaning of Section 9-310. As to household goods, however, subsection (3)(b) makes the warehouseman's lien "for charges and expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouseman to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency. [This paragraph was amended in 1966].

4. It is unnecessary to state here, as in Uniform Warehouse Receipts Act 31, that a bailee with a valid lien need not deliver until the lien is satisfied. Section 7-403 provides that a person demanding delivery under a document must be prepared to satisfy the bailee's lien.

5. Where goods have been stored under a non-negotiable warehouse receipt and are sold by the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The obligations of the seller of the goods in this situation are set forth in Section 2-503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of the buyer's right to possession of the goods. If a new receipt is requested, such an acknowledgment can be withheld until storage charges have been paid or provided for. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (1), continues valid unless the bailee gives it up. But once a new receipt is issued to the buyer, the buyer becomes "the person on whose account the goods are held" under the second sentence of subsection (1); unless he undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may preserve the general lien in such a case either by an

arrangement by which the buyer "is liable for" such charges, or by reserving a security interest under subsection (2).

Cross References

Point 2: Sections 9-102(2) and 9-310.

Point 3: Sections 7-503, 9-310 and 9-312.

Point 4: Section 7-403.

Point 5: Section 2-503.

Definitional Cross References

"Deliver". Section 1-201.

"Document". Section 7-102.

"Goods". Section 7-102.

"Money". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Right". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-209.

1973 Ed., § 28:7-209.

Legislative History of Laws

Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

§ 28:7-210. ENFORCEMENT OF WAREHOUSEMAN'S LIEN.

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

(Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 33, Uniform Warehouse Receipts Act.

Changes

Rewritten; simplified foreclosure proceeding provided for all liens other than warehousemen's lien in non-commercial storage.

Purposes of Changes

1. Subsection (1) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases except noncommercial storage with a warehouseman. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale, found in Section 33 of the Uniform Warehouse Receipts Act, are retained in subsection (2). The swifter, more flexible procedure of subsection (1) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706).

2. The provisions of subsections (4) and (5) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices.

Cross Reference

Section 7-403.

Definitional Cross References

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Notification". Section 1-201.

"Notifies". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-210.

1973 Ed., § 28:7-210.

PART 3. BILLS OF LADING; SPECIAL PROVISIONS.

§ 28:7-301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.

(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

(Dec. 30, 1963, 77 Stat. 723, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(ww), 44 DCR 1271.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 23, Uniform Bills of Lading Act.

Changes

Rewritten in part.

Purposes of Changes

1. The provision as to misdating in subsection (1) conforms to the policy of the amendment to the Federal Bills of Lading Act by 44 Stat. 1450 (1927), as amended 49 U.S.C. Section 102, after the holding in Browne v. Union Pac. R. Co., 113 Kan. 726, 216 P. 299 (1923), affirmed on other grounds, 267 U.S. 255, 45 S.Ct. 315, 69 L.Ed. 601 (1925). Subsections (2) and (3) conform to the policy of the Federal Bills of Lading Act, 49 U.S.C. Sections 100, 101, and the laws of several states. See, e.g., N.Y.Pers.Prop.Law Section 209; Report of N.Y. Law Revision Commission, N.Y.Leg.Doc. (1941) No. 65(F).

2. The language of the old Uniform Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve himself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the

shipper, which would include improper loading. There is some question whether under present law a carrier is liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. It is this doubtful liability which subsection (4) permits the carrier to bar by disclosure of shipper's loading. There is no implication that decisions such as Modern Tool Corp. v. Pennsylvania R. Co., 100 F.Supp. 595 (D.N.J.1951), are disapproved.

3. This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The issuer is liable on documents issued by an agent, contrary to instructions of his principal without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the carrier. Subsection (5) therefore provides appropriate indemnity.

Cross References

Sections 7-203 and 7-309.

Definitional Cross References

"Bill of lading". Section 1-201.

"Consignee". Section 7-102.

"Document". Section 7-102.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Notice". Section 1-201.

"Party". Section 1-201.

"Purchaser". Section 1-201.

"Receipt of goods". Section 2-103.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-301.

1973 Ed., § 28:7-301.

Legislative History of Laws

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28:7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of

any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

(Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

1. The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any connecting carrier and to make it clear that any such connecting carrier holds the goods on terms which are defined by the document of title even though such connecting carrier did not issue the document. Since the connecting carrier does hold on the terms of the document, it must honor a proper demand for delivery or a diversion order just as the original bailee would have to. Similarly it has the benefits of the excuses for nondelivery and limitations of liability provided for the original bailee. Unlike the original bailee-issuer, the connecting carrier's responsibility is limited to the period while the goods are in its possession. The section is patterned generally after the Interstate Commerce Act, but does not impose any obligation to issue through bills.

2. The reference to documents other than through bills looks to the possibility that multi-purpose documents may come into use, e.g., combination warehouse receipts and bills of lading.

3. Where the obligations or standards applicable to different parties bound by a document of title are different, the initial carrier's responsibility for portions of the journey not on its own lines will be determined by the standards appropriate to the connecting carrier. Thus a land carrier issuing a through bill of lading involving water carriage at a later stage will have the benefit of the water carrier's immunity from liability for negligence of its servants in navigating the vessel, where the law provides such an immunity for water carriers and the loss occurred while the goods were in the water carrier's possession.

4. Under Subsection (1) the issuer of a through bill of lading may become liable for the fault of another person. Subsection (3) gives it appropriate rights of recourse.

Definitional Cross References

"Agreement". Section 1-201.

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Overseas". Section 2-323.

"Party". Section 1-201.

"Person". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-302.

1973 Ed., § 28:7-302.

§ 28:7-303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) The holder of a negotiable bill; or

(b) The consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) The consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) The consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

(Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Purposes

1. The old Acts contained no reference to diversion, a very common commercial practice which defeats delivery to the consignee originally named in a bill of lading. The carrier was protected under the heading of "justified delivery" if the substituted consignee who received delivery was "a person lawfully entitled to possession of the goods." Cf. subsection (1)(d). This in turn depended on whether the person ordering the diversion was the owner of the goods or empowered to dispose of them, which again might depend upon whether under sales law title had passed from the consignor-seller to the consignee-buyer. The carrier is plainly not in a position to decide such questions when directed by the person with whom it has contracted for transportation to change the destination of the goods in transit. Carriers may as a business matter be willing to accept instructions from consignees in which case, as under the old uniform acts, the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods. The section imposes no duty on carriers to undertake diversion; it is of course subject to the provisions of filed tariffs. Section 7-103.

2. It should be noted that the section provides only an immunity for carriers against liability for "misdelivery." It does not, for example, defeat the title to the goods which the consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the carrier under a non-negotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to him, the consignee may recover the goods from the consignor or his insolvent estate. However, under certain circumstances, the consignee's title may be defeated by diversion of the goods in transit to a different consignee.

Cross References

Point 2: Sections 7-403 and 7-504(3).

Definitional Cross References

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Notice". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Term". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-303.

1973 Ed., § 28:7-303.

§ 28:7-304. BILLS OF LADING IN A SET.

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 6, Uniform Bills of Lading Act.

Changes

This section adds to existing legislation, which merely prohibits bills in a set in ordinary domestic trade, a statement of the legal effect of a lawfully issued set.

Purposes of Changes

The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other overseas bills. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this Article.

Cross Reference

Section 10-103.

Definitional Cross References

"Bailee". Section 7-102.

"Bill of lading". Section 7-102.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Overseas". Section 2-323.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

Prior Codifications

1981 Ed., § 28:7-304.

1973 Ed., § 28:7-304.

§ 28:7-305. DESTINATION BILLS.

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the

documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by truck and air, who do not have terminal facilities where shipments can be held to await consignee's appearance. Order bills would be useful to take advantage of bank collection. This may be preferable to C.O.D. shipment in which the carrier, e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan would be handled as follows: seller at San Francisco delivers the goods to an airline with instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank indorses the bill to buyer when he honors the draft. Normally seller would act through his own bank in San Francisco, which would extend him credit in reliance on the airline's contract to deliver a bill to the order of its New York correspondent. This section is entirely permissive; it imposes no duty to issue such bills. Whether a connecting carrier will act as issuing agent is left to agreement between carriers.

Definitional Cross References

"Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Receipt of goods". Section 2-103.

Prior Codifications

1981 Ed., § 28:7-305.

1973 Ed., § 28:7-305.

§ 28:7-306. ALTERED BILLS OF LADING.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 16, Uniform Bills of Lading Act.

Changes

Generally revised and simplified; explicit treatment of the situation where a blank in an executed document is filled without authority.

Purposes of Changes

An unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of his liability on the document as originally executed. Uniform Warehouse Receipts Act 13 excused the issuer from any liability to a fraudulent alterer, other than the liability to deliver the goods according to the terms of the original document. It is difficult to conceive what liability the draftsman intended to excuse. Uniform Bills of Lading Act 16 contains no such excuse provision, and is followed in this respect in the present section. Uniform Bills of Lading Act 16 characterizes an unauthorized alteration as "void" but apparently nothing more was intended than that the alteration did not change the obligation of the issuer. This is sufficiently covered by the terms of this Section. Moreover cases are conceivable in which an alteration would not be "void"; for example, an alteration made by common consent of a transferor and transferee of a document might evidence an enforceable contract between them. The same rule is made applicable to the filling in of blanks, a matter on which the prior Acts were silent.

Definitional Cross References

"Bill of lading". Section 1-201.

"Issuer". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-306.

1973 Ed., § 28:7-306.

§ 28:7-307. LIEN OF CARRIER.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 27 through 32, Uniform Warehouse Receipts Act.

Changes

Rewritten; lien extended to carrier. Lien of common carrier validated unless carrier had notice that consignor lacked authority to subject the goods to charges and expenses. Where the carrier is not required by law to receive the goods for transportation, lien validated against anyone who permitted the bailor to have possession even if he had no real or apparent authority.

Purposes of Changes

The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehousemen by the first sentence of Section 7-209. But since carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(1) and (2) are omitted. See Comment to Section 7-105. Since the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (2) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. Cf. Section 9- 310. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority.

Cross References

Sections 7-209, 9-102(2) and 9-310.

Definitional Cross References

"Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-307.

1973 Ed., § 28:7-307.

§ 28:7-308. ENFORCEMENT OF CARRIER'S LIEN.

(1) A carrier's lien may be enforced by public or private sale of the goods, en bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the

proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 28:7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

(Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(xx), 44 DCR 1271.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 33, Uniform Warehouse Receipts Act.

Changes

Rewritten; provisions extended to carriers' liens; simplified foreclosure proceeding provided.

Purposes of Changes

This section is intended to give the carrier an enforcement procedure of his lien coextensive with that given the warehousemen in cases other than those covering noncommercial storage by him. See Comment to Section 7-210.

Cross Reference

Section 7-210.

Definitional Cross References

"Bill of lading". Section 1-201.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Notification". Section 1-201.

"Notifies". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-308.

1973 Ed., § 28:7-308.

Legislative History of Laws

For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 28:7-301.

§ 28:7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

(Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 3, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

The old uniform act provided that bills of lading could not contain terms impairing the obligation of reasonable care. Whether this is violated by a stipulation that in case of loss the bailee's liability is limited to stated amounts has been much controverted. For interstate rail transportation the matter is settled by the Carmack Amendment to the Interstate Commerce Act (See 49 U.S.C.A. § 20(11)). The present section is a generalized version of the Interstate Commerce Act provisions. The obligation of due care is radically qualified, in the case of maritime bills and international airbills, by federal legislation and treaty. All this special legislation would remain in effect even if Congress enacts this Code, including the present Article. See Section 7-103.

Subsection (1) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (2), however, applies to such liability as well as to liability based on negligence. The entire section is subject under Section 7-103 to applicable provisions in filed tariffs, such as the common disclaimer of responsibility for undeclared articles of extraordinary value, hidden from view. Tariffs which lawfully provide a maximum unit value beyond which goods are not taken fall within the same principle, and are expressly covered by the words "value as lawfully provided in the tariff."

Cross Reference

Section 7-103.

Definitional Cross References

"Action". Section 1-201.

"Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Document". Section 7-102.

"Goods". Section 7-102.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-309.

1973 Ed., § 28:7-309.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF

LADING: GENERAL OBLIGATIONS.

§ 28:7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that:

(a) The document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) The issuer may have violated laws regulating the conduct of his business; or

(c) The goods covered by the document were owned by the bailee at the time the document was issued; or

(d) The person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 20, Uniform Warehouse Receipts Act; Section 23, Uniform Bills of Lading Act.

Changes

Most of the material is new; the uniform act sections cited deal only with non-receipt and misdescription.

Purposes of Changes and New Matter

The bailee's liability on his document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid his obligation to deliver the goods (Section 7-403) or his obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document" was issued because he failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of storage in the document. Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. As to the continuing vitality of regulations, in addition to those found in this Article, of documents of title, see Sections 7-103 and 10-103.

Cross References

Sections 7-103, 7-203, 7-204, 7-301, 7-309 and 10-103.

Definitional Cross References

"Bailee". Section 7-102.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-401.

1973 Ed., § 28:7-401.

§ 28:7-402. DUPLICATE RECEIPT OR BILL; OVERISSUE.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate

document as such by conspicuous notation on its face.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 6, Uniform Warehouse Receipts Act; Section 7, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

1. This section treats a duplicate which is not properly identified as such like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person who made his deception possible, except in the cases noted in the section. But parts of a bill lawfully issued in a set of parts are not "overissue" (Section 7-304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the warehouseman is not liable for preparing and delivering such a duplicate copy.

2. The section applies to nonnegotiable documents to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore himself have had no cause of action against the issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of his transferor.

3. Overissue is defined so as to exclude the common situation where two valid documents of different issuers are outstanding for the same goods at the same time. Thus freight forwarders commonly issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g. negotiation of a delivery order will effectively transfer title in the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 7-503 provides for cases of conflict between documents of different issuers.

Cross References

Point 1: Sections 7-207, 7-304, and 7-601.

Point 3: Section 7-503.

Definitional Cross References

"Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Fungible" goods. Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Right". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-402.

1973 Ed., § 28:7-402.

§ 28:7-403. OBLIGATION OF WAREHOUSEMAN OR CARRIER TO DELIVER; EXCUSE.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) The exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 28:2-705);

(e) A diversion, reconsignment or other disposition pursuant to the provisions of this article (section 28:7-303) or tariff regulating such right;

(f) Release, satisfaction or any other fact affording a personal defense against the claimant;

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under section 28:7-503 (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(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.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 8 through 12, 16 and 19, Uniform Warehouse Receipts Act; Sections 11 through 15, 19 and 22, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

1. The general and primary purpose of this revision is to simplify the statement of the bailee's obligation on the document. The interrelations of the separate sections of the old uniform acts dealing with "obligation to deliver," "justification in delivering," and "liability for misdelivery" are obscure. The present section is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the old uniform acts now find their place as "excuse" under subsection (1). Unjustified deliveries, i.e., "misdeliveries" under the old acts, are simply omitted from the list of excuses, thus permitting the normal obligation on the document to be asserted.

2. The principal case covered by subsection (1)(a) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse and takes a negotiable receipt, the warehouseman is not liable on the receipt if he has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 7-503(1). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner's receipt would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See Sections 7-502(1)(b), 7-503(1)(a).

3. Subsection (1)(b) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7-204 and 7- 309 of this Article. The optional language in subsection (1)(b) [not adopted in Minnesota. See Minnesota Code Comments, supra] states the rule laid down for interstate carriers in many federal cases. State decisions are in conflict as to both carriers and warehousemen. Particular states may prefer to adopt the federal rule.

4. Subsection (2) eliminates the implication of the old uniform acts that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of his lien when asked to deliver, and only in case this request is refused is he justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases.

5. Subsection (3) states the obvious duty of a bailee to take up a negotiable document or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that

stated in subsection 1(a) of this section and in Section 7-503(1). It is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the bailee's lien.

Cross References

Point 2: Sections 7-502 and 7-503.

Point 3: Sections 7-103, 7-204, 7-309 and 10-103.

Points 5: Section 7-503(1).

Definitional Cross References

"Bailee". Section 7-102.

"Conspicuous". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Right" Section 1-201.

"Terms". Section 1-201.

"Warehouseman". Section 7-102.

"Written". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-403.

1973 Ed., § 28:7-403.

§ 28:7-404. 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 therefor. 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.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 10, Uniform Warehouse Receipts Act; Section 13, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

The generalized test of good faith and observance of reasonable commercial standards is substituted for the attempts to particularize what constitutes good faith in the cited sections of the old uniform acts. The section states explicitly what is perhaps an implication from the old acts that the common law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen, who in good faith and with reasonable observance of commercial standards perform obligations which they have assumed and which generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well as to delivery to the holder of an invalid document.

Definitional Cross References

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Term". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-404.

1973 Ed., § 28:7-404.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

§ 28:7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE NEGOTIATION.".

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 28, 29, 31, 32 and 38, Uniform Sales Act; Sections 37, 38, 39, 40 and 47, Uniform Warehouse Receipts Act; Sections 9, 28, 29, 30, 31, and 38, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

1. In general this section is intended to clarify the language of the old acts and to restate the effect of the better decisions thereunder. An important new concept is added, however, in the requirement of "regular course of business or financing" to effect the "due negotiation" which will transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not his own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with

whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an order bill of lading for hides or cotton not his own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsection (4).

The second question posed by the "regular course" qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor himself may not have such rights to pass, and even though he may be acting in breach of duty? In raising this question the "regular course" criterion has the further advantage of limiting the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.

Any notice from the face of the document sufficient to put a merchant on inquiry as to the "regular course" quality of the transaction will frustrate a "due negotiation". Thus irregularity of the document on its face or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

A pre-existing claim constitutes value, and "due negotiation" does not require "new value." A usual and ordinary transaction in which documents are received as security for credit previously extended may be in "regular" course, even though there is a demand for additional collateral because the creditor "deems himself insecure." But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is "paid" in commodity paper, any question of "regular" course disappears, as the case is explicitly excepted from "due negotiation".

2. Negotiation under this section may be made by any holder no matter how he acquired possession of the document. The present section follows in this respect the Uniform Bills of Lading Act and amendments of the original Uniform Sales Act and Uniform Warehouse Receipts Act proposed by the Commissioners on Uniform State Laws in 1922.

3. Subsection (2)(b) makes explicit a matter upon which the intent of the old acts was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in "regular course."

4. This Article does not contain any provision creating a presumption of due negotiation to, and full rights in, a holder of a document of title akin to that created by Sections 16, 24 and 59 of the Negotiable Instruments Law. But the reason of the provisions of this Act (Section 1-202) on the prima facie authenticity and accuracy of third party documents, joins with the reason of the present section to work such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for this Act to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do so.

Cross References

Point 1: Sections 7-502 and 7-503.

Point 2: Section 7-502.

Definitional Cross References

"Bearer". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Good faith". Section 1-201.

"Holder". Section 1-201.

"Notice". Section 1-201.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-501.

1973 Ed., § 28:7-501.

§ 28:7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

(1) Subject to the following section and to the provisions of section 28:7- 205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 20(4), 25, 33, 38 and 62, Uniform Sales Act; Sections 41, 47, 48 and 49, Uniform Warehouse Receipts Act; Sections 32, 38, 39, 40 and 42, Uniform Bills of Lading Act.

Changes

Rewritten.

Purposes of Changes

1. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section.

2. Subsection (1)(c) covers the case of "feeding" of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (1)(d) of the bailee's direct obligation to the holder precludes the defense, sometimes successfully asserted under the old acts, that the document in question was "spent" after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as non-negligent destruction even though not apparent on the face of the document, and the bailee's obligation is of course subject to lawful provisions in filed classifications and tariffs. See Sections 7-103, 7- 403. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7-503(2) and Comment.

4. Subsection (2) condenses and continues the law of a number of sections of the prior acts which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection (1), but it has been included since such explicit references were relied upon under the prior acts to preserve the rights of a purchaser by due negotiation unimpaired. The listing is not exhaustive. Only those matters have been repeated in this subsection which were explicitly reserved in the prior acts except in the case of stoppage in transit. Here, the language has been broadened to include "any stoppage" lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser's rights.

Cross References

Sections 7-103, 7-205, 7-403 and 7-503.

Definitional Cross References

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Warehouse receipt". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-502.

1973 Ed., § 28:7-502.

§ 28:7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title coverings them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 28:7-403) or with power of disposition under this subtitle (sections 28:2-403 and 28:9-320) or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article, pursuant to its own bill of lading discharges the carrier's obligation to deliver.

(Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1; Oct. 26, 2000, D.C. Law 13-201, § 201(h), 47 DCR 7576.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 33, Uniform Sales Act; Section 41, Uniform Warehouse Receipts Act; Section 32, Uniform Bills of Lading Act.

Changes

Subsection (1) narrows, as compared to the cited sections, the occasions for defeating the document holder's title.

Purposes of Changes

1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to his own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or tenant does not require active consent under subsection (1)(b) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat his rights as against one who takes by "due" negotiation of a negotiable document.

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in his duty to sell for cash, the goods are "entrusted" to him "with actual ... authority ... to sell" under subsection (1)(a), and if he procures a negotiable document of title he can transfer the owner's

interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to him simply for safekeeping or storage may be entrusted under circumstances which give him "apparent authority to ship, store or sell" under subsection (1)(a), or power of disposition under Section 2-403, 7-205 or 9-307, or under a statute such as the earlier Factors Acts, or under a rule of law giving effect to apparent ownership. See Section 1-103.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than factors for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. Rounding out the case law development under the prior Acts, this Act is clear that such persons assume full risk that the agent to whom the goods are so delivered may ship or store in breach of duty, take a document to his own order and then proceed to misappropriate it. This Act makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only "in the regular course of business or financing" and that the purchase be in good faith and without notice. See Section 7-501. Documents of title have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a "conditional delivery" or under "cash sale" terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller's interest by transfer of the goods to certain good faith purchasers. See Section 2-403. Both in policy and under the language of subsection (1)(a) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

2. Under subsection (1) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (1)(a) or (b). Thus the rights of a transferee of a non-negotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in his procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 7-402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (2) in much the same way that the rights of a transferee may be defeated under Section 7-504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights before notification of the holder's rights. Section 7- 504(2)(b). But an accepted delivery order has the same effect as a document issued by the bailee.

3. Under subsection (3) a bill of lading issued to a freight forwarder is subordinated to the freight forwarder's certificate, since the bill on its face gives notice of the fact that a freight forwarder is in the picture and has in all probability issued a certificate. But the carrier is protected in following the terms of its own bill of lading.

Cross References

Point 1: Sections 2-403, 7-205, 7-501, 9-307, and 9-309.

Point 2: Sections 7-402 and 7-504.

Point 3: Sections 7-402, 7-403 and 7-404.

Definitional Cross References

"Bill of lading". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Person". Section 1-201.

"Right". Section 1-201.

"Warehouse receipt". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-503.

1973 Ed., § 28:7-503.

Effect of Amendments

D.C. Law 13-201, enacting a new Article 9 of the Uniform Commercial Code applicable July 1, 2001, made conforming amendments to this section applicable upon the same date.

Legislative History of Laws

Law 13-201, the "Uniform Commercial Code Secured Transactions Revision Act of 2000," was introduced in Council and assigned Bill No. 13-370, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 11, 2000, it was assigned Act No. 13-434 and transmitted to both Houses of Congress for its review. D.C. Law 13-201 became effective on October 26, 2000.

§ 28:7-504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) By those creditors of the transferor who could treat the sale as void under section 28:2-402; or

(b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) As against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 28:2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

(Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 34, Uniform Sales Act; Sections 41(b) and 42, Uniform Warehouse Receipts Act; Sections 32(b) and 33, Uniform Bills of Lading Act.

Changes

Generally rewritten; Subsection (3) is new.

Purposes of Changes and New Matter

1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than he himself has, even when the negotiation is formally perfect. This section recognizes the transferor's power to transfer rights which he himself has or has "actual authority to convey." Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare Section 2-403 on good faith purchase of goods.)

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if he had purchased the goods themselves. True, his rights are not subject to defeat by attachment of the goods or surrender of them to his transferor [Contrast subsection (2)]; but on the other hand, he cannot acquire enforceable rights to control or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to his consignor against a straight bill of lading can thereby acquire the position of a good faith purchaser of goods under provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment made in good faith against an unindorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize his status by compelling indorsement of the document (see Section 7-506).

2. As in the case of transfer--as opposed to "due negotiation"--of negotiable documents, subsection (1)

empowers the transferor of a nonnegotiable document to transfer only such rights as he himself has or has "actual authority" to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than he actually has. Subsection (2) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving notice of the transfer to the bailee.

3. Subsection (3) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under orthodox passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in the default of the manufacturer on his contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in accordance with this subsection.

4. Subsection (4) gives the carrier an express right to indemnity where he honors a seller's request to stop delivery.

5. Section 1-201(27) gives the bailee protection, if due diligence is exercised, similar to that found in the third paragraph of Section 33, Uniform Bills of Lading Act, where the bailee's organization has not had time to act on a notification.

Cross References

Point 1: Sections 2-403 and 7-506.

Point 2: Section 2-403.

Point 3: Sections 7-303 and 7-403(1)(e).

Point 4: Sections 2-705 and 7-403(1)(d).

Definitional Cross References

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Buyer in ordinary course of business". Section 1-201.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Honor". Section 1-201.

"Notification". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-504.

1973 Ed., § 28:7-504.

§ 28:7-505. INDORSER NOT A GUARANTOR FOR OTHER PARTIES.

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 37, Uniform Sales Act; Section 45, Uniform Warehouse Receipts Act; Section 36, Uniform Bills of Lading Act.

Changes

No substantial change.

Purposes of Changes

The indorsement of a document of title is generally understood to be directed towards perfecting the transferee's rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the document by the bailee will occur. See Section 7-502(1)(d) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the indorser for the bailee's ultimate actual performance.

Cross Reference

Section 7-502.

Definitional Cross References

"Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-505.

1973 Ed., § 28:7-505.

§ 28:7-506. DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL INDORSEMENT.

The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 35, Uniform Sales Act; Section 43, Uniform Warehouse Receipts Act; Section 34, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten; former requirement that transfer be "for value" eliminated.

Purposes of Changes

1. From a commercial point of view the intention to transfer a negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. This position is sustained by the absence of any reported case applying the prior provisions in almost forty years of decisions. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that delivery of a document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized his position until such indorsement is supplied. Until this is done he cannot claim rights under due negotiation within the requirements of this Article (subsection (4) of Section 7-501) on "due negotiation." Similarly despite the transfer to him of his transferor's title, he cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7- 403(2).

Cross References

Point 1: Section 7-505.

Point 2: Sections 7-501(4) and 7-403(2).

Definitional Cross References

"Document of title". Section 1-201.

"Rights". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-506.

1973 Ed., § 28:7-506.

§ 28:7-507. WARRANTIES ON NEGOTIATION OR TRANSFER OF RECEIPT OR BILL.

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(a) That the document is genuine; and

(b) That he has no knowledge of any fact which would impair its validity or worth; and

(c) That his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 36, Uniform Sales Act; Section 44, Uniform Warehouse Receipts Act; Section 35, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten without change in policy.

Purposes of Changes

1. This section omits provisions of the prior acts on warranties as to the goods as unnecessary and incomplete. It is unnecessary because such warranties derive from the contract of sale and not from the transfer of the documents. The fact that transfer of control occurs by way of a document of title does not limit or displace the ordinary obligations of a seller. The former provision, moreover, was incomplete because it did not expressly include all of the warranties which might rest upon a seller under such circumstances. This Act handles the problem by means of the precautionary reference to "any warranty made in selling the goods." If the transfer of documents attends or follows the making of a contract for the sale of goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary are stated in Section 7-508.

Cross References

Point 1: Sections 2-312 through 2-318.

Point 2: Section 7-508.

Definitional Cross References

"Document". Section 7-102.

"Document of title". Section 1-201.

"Genuine". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-507.

1973 Ed., § 28:7-507.

§ 28:7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a bank only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.

3. Other duties and rights of banks handling documentary drafts for collection are stated in Article 4, Part 5.

Cross References

Sections 4-203 and 7-507, 4-501 through 4-504.

Definitional Cross References

"Collecting bank". Section 4-105.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Draft". Section 5-103.

"Good faith". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-508.

1973 Ed., § 28:7-508.

§ 28:7-509. RECEIPT OR BILL; WHEN ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (Article 2) and on letters of credit (Article 5).

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

None.

Purposes

To cross-refer to the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

Cross References

Articles 2 and 5.

Definitional Cross References

"Contract for sale". Section 2-106.

"Document". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-509.

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS.

§ 28:7-601. LOST AND MISSING DOCUMENTS.

(1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Section 14, Uniform Warehouse Receipts Act; Section 17, Uniform Bills of Lading Act.

Changes

General revision. Principal innovations include: affirmation of bailee's privilege to deliver to claimant without resort to judicial proceedings if the bailee acts in good faith and is willing to take the full risk of loss in case the lost document turns up in the hands of an innocent purchaser; explicit authorization to the court to order bailee to issue a substitute document rather than make physical delivery of the goods; inclusion of "stolen" as well as lost documents; extension of section to non-negotiable documents.

Purposes of Changes

The purposes of the changes insofar as they are not self-evident are as follows:

1. As to bailee's privilege to deliver without court order, doubt had arisen as to the propriety of such action under Section 54 of the Uniform Warehouse Receipts Act, which made it a crime to deliver goods covered by negotiable receipts without taking up the receipts "except in the cases provided for in Section 14" (the lost receipts section). This has been interpreted by one court as exempting from criminal liability only if the judicial procedure of Section 14 was followed. Dahl v. Winter-Truesdell-Diercks Co., 61 N.D. 84, 237 N.W. 202 (1931). Although the criminal provisions are not being re-enacted in this Act (and the Uniform Bills of Lading Act never did include such a criminal provision), it seems advisable to clarify the legality of the well established commercial practice of bailees to make delivery where they are satisfied that the claimant is the person entitled under a lost document. Since the bailee remains liable on the document in such cases, he will usually insist that the claimant provide an indemnity bond.

2. The old acts provide only for compulsory delivery of goods; this Section provides also for compulsory issuance of a substitute document. If continuance of the bailment is desirable there is no reason to require the goods to be withdrawn and redeposited in order to secure a negotiable document. The present acts would probably be so interpreted. Section 20 of the Federal Warehouse Act and some state laws expressly require issuance of a new receipt on proof of loss and posting of bond.

3. Claimants on non-negotiable instruments are permitted to avail themselves of this procedure because straight bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement.

Ordinarily no security would be necessary to indemnify a bailee in delivering to the person named in a non-negotiable document. But disputes as to negotiability may arise, in which case if there is a reasonable doubt on the point the bailee should be protected against the possibility that the missing document would, in the hands of an innocent purchaser for value, be held negotiable.

4. It seems unnecessary to state, as do the present acts, that the court shall act "on satisfactory proof of such loss or destruction." The right of action created by the section is conditioned on a document being lost, stolen or destroyed. Plaintiff must of course bring himself within the section. There is nothing in the language of the

old acts to suggest that they intended to impose anything but the normal burden of proof on the plaintiff in such proceedings.

5. Subsection (2) makes it clear that after delivery without court order the bailee remains liable for actual damages. Liability for conversion is provided where the delivery is dishonest, but excluded where a filed classification or tariff is followed in good faith, or where the described bond is posted in good faith and no classification or tariff is filed. Liability for conversion in other cases is left to judicial decision.

Definitional Cross References

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Good faith". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouseman". Section 7-102.

Prior Codifications

1981 Ed., § 28:7-601.

1973 Ed., § 28:7-601.

§ 28:7-602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE DOCUMENT.

> Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

(Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provisions

Section 25, Uniform Warehouse Receipts Act; Section 24, Uniform Bills of Lading Act.

Changes

Consolidated and rewritten.

Purposes of Changes

1. The purpose of the section is to protect the bailee from conflicting claims of the document holder and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable document. However, if the document was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor's interest in the goods.

2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser for value. In such case the lien will be defeated.

Cross Reference

Point 1: Section 7-503.

Definitional Cross References

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document". Section 7-102.

"Goods". Section 7-102.

"Notice". Section 1-201.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Value". Section 1-201.

Prior Codifications

1981 Ed., § 28:7-602.

1973 Ed., § 28:7-602.

§ 28:7-603. CONFLICTING CLAIMS; INTERPLEADER.

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, which ever is appropriate.

(Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1.)

HISTORICAL AND STATUTORY NOTES

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision

Sections 16 and 17, Uniform Warehouse Receipts Act; Sections 20 and 21, Uniform Bills of Lading Act.

Changes

Consolidation without substantial change.

Purposes of Changes

The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with him.

Definitional Cross References

"Action". Section 1-201.

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Reasonable time". Section 1-204.

Prior Codifications

1981 Ed., § 28:7-603.

1973 Ed., § 28:7-603.