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on the formal requisites for negotiability¹⁰ and the rights of a holder in due course.¹¹ The present series of comments¹² discuss other sections of articles 3 and 4. The subjects which are considered are transfer and negotiation,¹³ material alterations,¹⁴ the "impostor rule,"¹⁵ the doctrine of *Price v. Neal*,¹⁶ the doctrine of *Young v. Grote*,¹⁷ certification,¹⁸ and deferred posting.¹⁹ It is hoped these papers may be of some assistance to the legislators and bar of Louisiana whenever the Uniform Commercial Code is considered for adoption by this state.

The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—Transfer and Negotiation

The Uniform Commercial Code, if adopted in Louisiana, will effectuate many changes in the law as it exists under the Negotiable Instruments Law.¹ A number of these proposed changes occur in the field of transfer and negotiation and this Comment is limited in scope to those matters. To facilitate the discussion, each of the applicable Code² provisions is set out,³ followed by an analysis of its effect on the present law.⁴

10. Comment, *The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—Formal Requisites of Negotiability*, 15 LOUISIANA LAW REVIEW 403 (1955).

11. Comment, *The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—Rights of a Holder*, 15 LOUISIANA LAW REVIEW 419 (1955).

12. The comments in this symposium were originally prepared as research papers in the course on Commercial and Investment Papers conducted by Dean Paul M. Hebert in the Spring Semester, 1955. The papers have been extensively revised, under Dean Hebert's supervision, for publication.

13. See page 91 *infra*.

14. See page 105 *infra*.

15. See page 115 *infra*.

16. See page 128 *infra*.

17. See page 134 *infra*.

18. See page 141 *infra*.

19. See page 164 *infra*.

1. La. Acts 1904, No. 64, p. 147; LA. R.S. 7:1-195 (1950).

2. The UNIFORM COMMERCIAL CODE, OFFICIAL DRAFT, TEXT AND COMMENTS EDITION (1952). Amendments made through 1955 as reflected in SUPPLEMENT No. 1 TO THE 1952 OFFICIAL DRAFT OF TEXT AND COMMENTS OF THE UNIFORM COMMERCIAL CODE (1955) bearing on the subject matter of the Comment are set out and discussed where applicable.

3. UCC 3-207, 3-208, dealing with rescission and reacquisition respectively, will not be discussed in this Comment.

4. Unless otherwise noted, Louisiana courts are in accord with the majority of other jurisdictions in its interpretations of the sections of the NIL herein discussed. Consequently, on many points no reference will be made to Louisiana jurisprudence.

Transfer and the Right to Endorsement of Unendorsed Instruments

UCC section 3:201 provides: "(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

"(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

"(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner."

One of the features which distinguishes section 3-201(1) of the Code from NIL section 49 is that the provision of the Code applies to any transfer, whether by transferors who are holders or not, and whether the transfer is by negotiation or not.⁵ While NIL section 49⁶ refers only to non-endorsing holders, it is doubtful that any change in the law will be effected by the broader scope of section 3-201(1).⁷ However, such additional language in the Code does constitute a desirable clarification.

In keeping with the broad provisions of the Code, section 3-201(1) employs the term "rights" rather than the term "title" which is used in NIL section 49.⁸ Thus, even if the transferor

5. UCC 3-201, comment 1.

6. LA. R.S. 7:49 (1950): "Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made."

7. For a comprehensive treatment by a leading authority of the scope of article 3 of the Code concerning problems involving transfers and negotiations, see Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 154 (1953). For a discussion of the changes made in article 3 by the 1955 amendments, see Vergari, *Amending the Uniform Code — In re Articles 3, 4 and 5*, 28 TEMPLE L.Q. 529, 535 (1955).

8. LA. R.S. 7:49 (1950).

has no "title," the transferee would still acquire whatever rights the transferor might have had.⁹ Another change which should eliminate a conflict existing under the NIL¹⁰ is the provision of section 3-201(1) which does not limit transfers to those for value.¹¹ Thus, since the word "value" is omitted, the Code can be interpreted as approving transfers by gift.

Section 3-201(1), in prohibiting a prior holder who has notice of a defense from improving his position by taking from a later holder in due course,¹² expands the scope of NIL section 58,¹³ which prohibits a reacquiring holder who is a party to any fraud or illegality affecting the instrument from becoming a holder in due course. In addition, the Code enlarges upon the NIL provision by making the rule applicable to reacquiring transferees and not just to reacquiring holders.

Section 3-201(2) broadens the scope of application of NIL section 27¹⁴ so as to benefit transferees of security interests who acquire an instrument from non-endorsing transferors, instead of restricting such benefits to holders only.

Many courts¹⁵ hold that, in the absence of a prior agreement to the contrary, a transferee of an unendorsed instrument under NIL section 49 is entitled to an unqualified endorsement. Section 3-201(3) eliminates any doubt on the question by granting a transferee for value the right to acquire the unqualified endorsement of his transferor by an action for specific performance.¹⁶ At the same time, the section allows the parties to agree to a qualified endorsement. It is important to note, however, that under section 3-201(3) the right to an unqualified endorsement

9. UCC 3-201, comment 1.

10. BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 657-58 (7th ed., Beutel, 1948); BRITTON, *BILLS AND NOTES* 295 (1943).

11. UCC 3-201, comment 2.

12. This new provision of the Code adopts the rule of *Dollarhide v. Hopkins*, 72 Ill. App. 509 (1897), decided before the advent of the NIL, wherein the court denied the ability of a party having knowledge of the maker's defenses to a promissory note to purge the note of such defenses by assigning it to a third person and then reacquiring the note.

13. LA. R.S. 7:58 (1950): "But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter."

14. LA. R.S. 7:27 (1950): "Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."

15. *Simpson v. First Nat. Bank*, 94 Ore. 147, 185 Pac. 913 (1919). For a general discussion and collection of additional cases, see BRITTON, *BILLS AND NOTES* 295-96 (1943).

is only applicable to transfers for value. Therefore, where the transfer is by gift, the donee cannot demand his transferor's unqualified endorsement.¹⁷ The question of whether or not the donee can demand a qualified endorsement is left unanswered by the Code.

The Code makes no change in the rule of NIL section 49, which provides that negotiation takes effect only upon actual endorsement of the instrument. No retroactive effect is given to such endorsement either under the Code or the NIL.

Section 3-201(3), by providing that there is no presumption that the transferee of the instrument is the owner thereof until endorsement is made, is in accord with the rule followed in Louisiana and the majority of jurisdictions on the subject.¹⁸ Under the majority rule, NIL section 49 is interpreted to mean that since a transferee of an unendorsed instrument is not a holder, technically he does not have lawful possession and, therefore, must prove that he is the owner of the instrument.¹⁹ Consequently, since the Code follows this prevailing construction, it is merely a restatement of the rule which exists under the NIL.

Transfers Which Are Negotiations

UCC section 3-202 provides: "(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

"(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

16. UCC 3-201, comment 6.

17. *Ibid.*

18. In declaring that the presumption is that a note not endorsed is the property of the payee, the court in *Bertrand Feed Co. v. Dedeabant*, 9 Orl. App. 321, 322 (1912), held that "this presumption is not overcome by the mere fact of the notes being in the physical possession of a third person; but it may be rebutted by evidence showing that such third person is the true owner and bona fide holder [sic] thereof." However, as applied to a transferee of unendorsed paper and according to the definition of holder in NIL § 191, the court's use of the term "holder" is legally inexact. NIL § 191 provides that holder "means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof." See *Roberts v. Howard*, 15 La. App. 279, 131 So. 496 (1930).

19. *Capital Hill State Bank v. Rawlins Nat. Bank*, 24 Wyo. 423, 160 Pac. 1171 (1916). See BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 650-53 (7th ed., Beutel, 1948); BRITTON, *BILLS AND NOTES* 289-91 (1943).

"(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

"(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement."

In order to properly compare section 3-202(1) with its counterpart in the NIL, section 30,²⁰ the differences between various definitions in the Code and the NIL should be examined.

Under NIL section 191²¹ "holder" means "the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof," while under section 1-201(20) of the Code "holder" means "a person who is in possession of a document of title or an instrument or an investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank." The most obvious distinction between the two definitions is that the Code's definition includes documents of title and investment securities and the NIL does not. However, NIL section 191 has been interpreted to include bonds, mortgages, chattel notes, and similar securities.²² Although the language of the Code differs somewhat from that of the NIL, the Code and the NIL contain the same provision to the effect that payees and endorsees in possession are holders.

Under the NIL, the only or last endorsement must be an endorsement in blank to render an instrument which is payable to order a bearer instrument.²³ Section 1-201(5) of the Code defines "bearer" as "the person in possession of an instrument . . . payable to bearer or indorsed in blank." There is no express requirement that the last endorsement must be in blank to render the instrument bearer paper. While the Code's definition would probably be interpreted to require the last endorsement to be in blank, it could also be interpreted to mean that the instrument

20. LA. R.S. 7:30 (1950): "An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery, if payable to order it is negotiated by the indorsement of the holder completed by delivery."

21. LA. R.S. 7:191 (1950).

22. Beutel, *Comparison of the Proposed Commercial Code, Article 3, and the Negotiable Instruments Law*, 30 NEB. L. REV. 531, 535 (1951).

23. LA. R.S. 7:9(5) (1950).

is bearer paper even if it contains a blank endorsement followed by a special endorsement.²⁴ Section 3-204(2) of the Code confuses the situation further by providing that "an instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone *until specially indorsed.*" (Emphasis added.) The result of the foregoing complications is that the Code's definition of "bearer" lacks the clarity and certainty of its counterpart in the NIL. It is submitted that sections 1-201(5) and 3-204(2) of the proposed Code require revision because of their inconsistency.

While the definitions of the term "negotiation" are similar under the Code and the NIL,²⁵ one major difference should be noted. NIL section 30 reads: "[I]t [an instrument] is negotiated by the indorsement of the holder" and thereby confines negotiations to transfers by holders only. Thus, transfers from a maker to a payee are not considered as a negotiation under the NIL.²⁶ The Code contains no provision similar to that quoted from NIL section 30. It must be assumed, therefore, that by such omission it was probably intended that such transfers as that from maker to payee should fall within the Code's definition of negotiation.

Section 3-202(1) provides that an instrument payable to order is "negotiated by delivery with any *necessary* indorsement." (Emphasis added.) Why the Code added the word "necessary" is not clear. NIL section 30 does not contain such a requirement. The comment on section 3-202 is silent as to what significance, if any, should be attached to the word "necessary." On the other hand, both the Code and the NIL provide that the method of negotiation of bearer instruments is by delivery.

Section 3-202(2) is basically the same as the first sentence of NIL section 31.²⁷ The Code provision, however, is more precise; it states that "an indorsement must be written on the instrument or on a paper so firmly affixed thereto as to become a part thereof." The language is intended to codify interpretations of NIL section 31 to the effect that an endorsement pinned

24. Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 158 (1953).

25. LA. R.S. 7:30 (1950). For the text of this section, see note 20 *supra*.

26. BRITTON, BILLS AND NOTES 194 (1943).

27. LA. R.S. 7:31 (1950): "The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement."

or clipped to an instrument does not constitute a negotiation.²⁸ Furthermore, under the majority interpretation of NIL section 31, in order for an endorsement on a separate attached paper to operate as a negotiation, the common law requirement that there must be no room on the instrument for further endorsements²⁹ must be satisfied. If the requirement is met, the endorsement will then be valid on an attached "allonge," although there is nothing in the express language of the NIL that supports such a requisite. The Code offers no textual solution to the problem. It is true that comment 3 for section 3-202 states that the endorsement can be on an "allonge," but nothing is said about whether or not the instrument itself must be filled up before an "allonge" can be used. Chances are, however, the present majority rule will continue to be followed.

There is no requirement in the Code concerning the location of the endorsement on the instrument. Therefore, the Code would not disturb the decision of the Louisiana court in *White System of New Orleans, Inc. v. Hall*,³⁰ which interpreted NIL section 31 to permit an endorsement to be on the face of a note just above the signatures of the makers.

Section 3-202(3) retains the rule of NIL section 32³¹ which provides that to be effective the endorsement must convey the entire instrument or unpaid residue. Thus the Code is consistent with the decision of the Louisiana court in *Public Inv. Co. v. Stafford*,³² a case holding a note that was endorsed for the proportion and to the extent of the percentage shown opposite the endorsers' signatures to be negotiable. The court said such endorsement satisfied the requirements of NIL section 32 because the whole amount payable was transferred by the endorsements and not just a part of that amount, and because such endorsement merely limited the respective endorser's liability.

Section 3-202(3) clarifies a point on which NIL section 32 is silent by providing that if the endorsement purports to convey

28. UCC 3-202, comment 3; *Clark v. Thompson*, 194 Ala. 504, 69 So. 925 (1915). For a collection of additional cases, see BRITTON, BILLS AND NOTES 225-26 (1943).

29. In the decision of *Clark v. Thompson*, 194 Ala. 504, 69 So. 925 (1915), the court held that the use of the "allonge" cannot be approved where there is sufficient room for the indorsement on the back of the instrument itself. For a general discussion, see BRANNAN, NEGOTIABLE INSTRUMENTS LAW 600-01 (7th ed., Beutel, 1948); BRITTON, BILLS AND NOTES 225-26 (1943).

30. 219 La. 440, 53 So.2d 227 (1951).

31. LA. R.S. 7:32 (1950).

32. 195 So. 817 (La. App. 1940).

less than the entire instrument, it shall constitute a partial assignment. NIL section 32 merely provides that such a transfer is not a negotiation, but says nothing as to its effect.³³

Section 3-202(4) is intended to reject decisions which have prevented the addition of words of assignment³⁴ and words of guaranty³⁵ from operating as an endorsement. These decisions represent a minority view, for under NIL section 38³⁶ the majority of courts have held that words of assignment are mere surplusage and do not affect the negotiability of the instrument.³⁷ And as to words of guaranty, the decision of a California court in *Adolph Ramish, Inc. v. Woodruff*³⁸ is representative of the majority opinion on the subject. There the court held such words to be words of enlargement, rather than limitation, which render the transferor liable as a guarantor in addition to being liable as an endorser. Therefore, an endorsement of a holder accompanied by words of guaranty, would constitute a negotiation. Comment 3 of section 3-202 indicates that the Code follows the majority in both the words of assignment and words of guaranty situations.

Although the Code's language is preferable, the use of the terms "words of waiver" and "condition" merely codifies the result reached under NIL section 39 to the effect that the use of such terms does not render the instrument non-negotiable.³⁹ Similarly, the use of the term "limitation or disclaimer of liability" in the Code reaches the same result as NIL section 38.⁴⁰

33. Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 163-64 (1953).

34. UCC 3-202, comment 5. See, e.g., *Gale v. Mayhew*, 161 Mich. 96, 125 N.W. 781 (1910); *Carius v. Ohio Contract Purchase Co.*, 30 Ohio App. 57, 164 N.E. 234 (1928).

35. UCC 3-202, comment 6. See, e.g., *O'Keefe v. Hill*, 105 F.2d 325 (3d Cir. 1939); *Zuehlke v. Engel*, 299 Wis. 386, 282 N.W. 579 (1938).

36. LA. R.S. 7:38 (1950): "A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse' or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument."

37. *Jones County Trust & Savings Bank v. Kurt*, 192 Iowa 965, 182 N.W. 409 (1921); *Divelbiss v. Burns*, 161 Miss. 724, 138 So. 346 (1931); *Thorp v. Mindeman*, 123 Wis. 149, 101 N.W. 417 (1904); BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 624-25 (7th ed., Beutel, 1948); BRITTON, *BILLS AND NOTES* 232 (1943).

38. 28 P.2d 360, 91 A.L.R. 684 (Cal. 1934), *subsequent opinion*, 2 Cal.2d 190, 40 P.2d 509, 96 A.L.R. 1146 (1934); see *Cady v. Bay City Land Co.*, 102 Ore. 5, 201 Pac. 179, 21 A.L.R. 1367 (1921).

39. I.A. R.S. 7:39 (1950); *Perry Nat. Bank v. Engnell*, 198 Iowa 26, 199 N.W. 283 (1924); *National Bank of Commerce v. Kenney*, 98 Tex. 293, 83 S.W. 368 (1904); see BRITTON, *BILLS AND NOTES* 162-63 (1943).

40. *Page v. Ford*, 65 Ore. 450, 131 Pac. 1013 (1913); see BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 626-27 (7th ed., Beutel, 1948).

Endorsement Where the Instrument Is Payable to a Person Under a Wrong or Misspelled Name

UCC section 3-203 provides: "Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument."

This section of the Code is similar to NIL section 43,⁴¹ but contains two important additions. The Code allows an endorser to endorse in his own true name alone, if desired. Also, to supplement that addition, the Code provides that a person paying or giving value for an instrument can require the holder to endorse in both his true name and the one appearing on the instrument. By requiring that the person who may require both signatures must pay or give value, however, the Code denies to a person acquiring an instrument by gift the right to require signatures in both names.

Special Endorsements and Blank Endorsements

UCC section 3-204 provides: "(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

"(2) An indorsement in blank specifies no particular indorsee, and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed or indorsed for collection (Section 3-206).

"(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement."⁴²

Although NIL section 34⁴³ and section 3-204(1) are worded

41. LA. R.S. 7:43 (1950): "Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature." For a general discussion, see BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 636-38 (7th ed., Beutel, 1948).

42. Subsection 3 of section 3-204 was added to the UCC by SUPPLEMENT No. 1 TO THE 1952 OFFICIAL DRAFT OF TEXT AND COMMENTS OF THE UNIFORM COMMERCIAL CODE (1955).

43. LA. R.S. 7:34 (1950): "A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and the instrument so indorsed is payable to bearer, and may be negotiated by delivery."

differently, their meaning is similar, except that the Code provides that "any instrument specially indorsed becomes payable to the order of the indorsee and may be further negotiated only by his indorsement." (Emphasis added.) Under NIL section 40,⁴⁴ if an instrument on its face is payable to bearer, it may be negotiated by delivery even though it is endorsed specially.⁴⁵ By providing that any instrument which is specially endorsed may be further negotiated only by endorsement, the Code reverses the rule of NIL section 40 so that even paper payable to bearer on its face can be negotiated when it has been specially endorsed⁴⁶ only by endorsement and not by mere delivery.

Under NIL sections 9(5) and 34, if an instrument is payable to order on its face, but has become payable to bearer by virtue of a blank endorsement, the last endorsement is controlling. Thus, if a blank endorsement is followed by a special endorsement, the latter will control and negotiation can be effected only by another endorsement.⁴⁷ There is no change here as this rule is adopted by the last sentence of section 3-204(2) of the Code.

NIL section 35,⁴⁸ which allows a holder to "convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement" was omitted from the 1952 draft of the Code. The reason, as explained by the Code's draftsmen in their comment is the misleading nature of NIL section 35 in that that section led to attempts to alter materially the blank endorser's contract by use of various terms, such as "payment guaranteed."⁴⁹ This omission from the Code was criticized on the ground that without something like the provision of NIL section 35 if an instrument's last endorsement were in blank and the instrument were stolen from the holder, a bona fide pur-

44. LA. R.S. 7:40 (1950): "Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holder as make the title through his indorsement."

45. BRANNAN, *NEGOTIABLE INSTRUMENTS LAW* 628-31 (7th ed., Beutel, 1948); BRITTON, *BILLS AND NOTES* 245 (1943).

46. UCC 3-204, comment 2.

47. BRITTON, *BILLS AND NOTES* 248 (1943). For further discussion of the subject, see Goble, *Effect of a Special Endorsement on a Bearer Instrument*, 5 ILL. L.Q. 247 (1923).

48. LA. R.S. 7:35 (1950).

49. UCC 3-204, comment 1.

chaser from the thief would get good title.⁵⁰ The criticism apparently was well taken, for the provision of NIL section 35 has been reinstated as section 3-204(3) in the 1955 amendments to the 1952 draft.

Under NIL section 34 an instrument which is endorsed in blank may be negotiated by delivery.⁵¹ Although this rule is retained in the Code, it is made clearer by the provision that an instrument endorsed in blank may be negotiated by delivery *alone*.

Section 3-204(2), by providing that an endorsement in blank *may* consist of a mere signature, raises the problem of what words may be added to the signature without damaging the effectiveness of the blank endorsement. NIL section 31, by providing that "the signature of the indorser, without additional words, is a sufficient indorsement," is less ambiguous than its counterpart in the Code.

Conditional Endorsements and Endorsements Prohibiting Transfer

UCC section 3-205 provides: "Neither a conditional indorsement nor one purporting to prohibit further transfer of the instrument prevents its further transfer or negotiation, and the transferee may enforce payment in disregard of the limitation; but except for an intermediary bank and a payor bank which is not a depository bank the indorsee and any subsequent transferee takes the instrument or its proceeds subject to any rights of the indorser."⁵²

The most significant change brought about by section 3-205 of the 1952 draft of the Code was its proposed nullification of the rule of NIL section 36(1),⁵³ classifying an endorsement which prohibits the further negotiation of an instrument as re-

50. Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 165 (1953).

51. *Dickson Ice Cream Co. v. Knight*, 177 La. 735, 149 So. 439 (1933).

52. As amended by SUPPLEMENT NO. 1 TO THE 1952 OFFICIAL DRAFT OF TEXT AND COMMENTS OF THE UNIFORM COMMERCIAL CODE (1955). Before amendment section 3-205 provided: "Neither a conditional indorsement nor one purporting to prohibit further transfer of the instrument prevents its further transfer or negotiation, and the transferee may enforce payment in disregard of the limitation; but the indorsee and any other subsequent transferee except a collecting or payor bank takes the instrument or its proceeds subject to any rights of the indorser."

53. LA. R.S. 7:36(1) (1950).

restrictive. Instead, the 1952 draft made such endorsement conditional rather than restrictive. However, this is changed by the inclusion of subsection (2) in section 3-206 of the 1955 amendments to the Code. This subsection adds a definition of restrictive endorsement even broader than NIL section 36, because the definition in the former also includes conditional endorsements.⁵⁴ An instrument containing such a restrictive endorsement as defined in section 3-206(2) would still be capable of being transferred or negotiated and a subsequent endorsee would be a holder. Comment 1 on section 3-205 makes clear, however, that it is not within the power of an endorser to change the character of the original obligation. It should be noted also that section 3-205 applies to transfers as well as negotiations while NIL section 36(1) is limited to negotiations.

Under NIL section 39,⁵⁵ a payer of an instrument conditionally endorsed has the privilege of disregarding that condition and making payment to the transferee. The Code further provides that the transferee under a conditional endorsement, or one prohibiting transfer, has the right to enforce payment from a prior party in disregard of the condition. However, as under NIL section 39, the endorsee is subject to the rights of the endorser who conditionally endorsed, and cannot take as a holder in due course.

Furthermore, section 3-205 eliminates an uncertainty existing under NIL section 39⁵⁶ by excepting from the above rule intermediary banks and payer banks which are not depositary banks, thus providing that such former banks are not subject to the rights of the person endorsing restrictively. Depositary banks continue to be subject to liability as is any transferee or payer for mishandling instruments with a "restrictive endorsement."

54. See the draftsmen's reason for the change in section 3-206, SUPPLEMENT NO. 1 TO THE 1952 OFFICIAL DRAFT OF TEXT AND COMMENTS OF THE UNIFORM COMMERCIAL CODE, at 18 (1955).

55. LA. R.S. 7:39 (1950): "Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally."

56. Cosway, *Innovations in Articles Three and Four of the Uniform Commercial Code*, 16 LAW & CONTEMP. PROB. 234, 300 (1951).

Endorsement "For Collection," "For Deposit," To Agent or In Trust; "Restrictive Endorsements."

UCC section 3-206 provides: "(1) When an indorsement, whether blank or special, states that it is 'for collection,' 'for deposit,' or otherwise for the benefit or account or use of the indorser or of another person

"(a) any subsequent party except either an intermediary bank or payor bank which is not a depository bank must apply any value given by him for or on the security of the instrument consistently with the indorsement;

"(b) to the extent that a purchaser does so he becomes a holder for value.

"(2) In this Act, 'restrictive indorsement' means a conditional indorsement, or one purporting to prohibit further transfer of the instrument (3-205) or one which whether blank or special states that it is 'for collection,' 'for deposit' or otherwise for the benefit or account or use of the indorser or of another person."⁵⁷

Section 3-206 of the 1952 draft of the Code eliminated the use of the term "restrictive indorsement," which is used in NIL sections 36 and 37. As has been noted in the discussion of section 3-205, the type of endorsement that was "restrictive" under NIL section 36(1) because it prohibited further negotiation, was treated as a type of conditional endorsement by the 1952 draft. The 1955 amendment to section 3-206 of the Code restores the use of the term "restrictive" endorsement as used in the NIL, and broadens it by including conditional endorsements within its definition.

The Code eliminates the provisions of NIL sections 47⁵⁸ and

57. As amended by SUPPLEMENT NO. 1 TO THE 1952 OFFICIAL DRAFT OF TEXT AND COMMENTS OF THE UNIFORM COMMERCIAL CODE (1955). Before amendment section 3-206 provided: "When an indorsement, whether blank or special, states that it is 'for collection,' 'for deposit,' or otherwise for the benefit or account or use of the indorser or of another person (a) the first taker under the indorsement must apply any value given by him for or on the security of the instrument in the manner and to the person or account directed by the indorsement; (b) to the extent that he does so he becomes a holder for value; (c) later holders for value are not affected by the direction contained in the indorsement unless they have reasonable grounds to believe that a fiduciary has negotiated the instrument in breach of duty (Subsection (2) (b) of Section 3-304)."

58. I.A. R.S. 7:47 (1950): "An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise."

37.⁵⁹ Those sections along with NIL section 36(3) have been construed by the courts to reach the result that a bona fide purchaser from a restrictive endorser covered by NIL section 36(3), who was not in the chain of title, could not be a holder in due course with regard to equities and defenses to which the restrictive endorser was subject.⁶⁰ Subsection (c)⁶¹ of section 3-206 of the 1952 draft of the Code was intended to repudiate that rule and allow holders for value who take from agent endorsees⁶² or endorsees in trust⁶³ to become holders in due course, unless they had reason to believe that a fiduciary had negotiated the instrument in breach of duty.⁶⁴ However, by the omission of the provisions of subsection (c) from the 1955 amendments to the Code and by the change of language in subsection (a), the result reached by the courts under the NIL, as pointed out above, would also be reached by the amended Code. Thus, any party, except an intermediary bank or payer bank which is not a depository bank, who purchases an instrument which has been restrictively endorsed as defined in section 3-206(2) could not be a holder in due course and could only qualify as a holder for value to the extent that he applies any value given by him for or on the security of the instrument consistently with the endorsement. The result reached by the 1952 draft was due to its treatment of endorsements for the benefit, account, or use of the endorser or someone else as being basically blank or special endorsements, to be treated in light of subsections (a), (b), and (c) of section 3-206.⁶⁵ The amended section 3-206 regards such endorsements as "restrictive." In the final analysis the 1955 amendments restore the "restrictive" endorsement, but do not

59. LA. R.S. 7:37 (1950): "A restrictive indorsement confers upon the indorsee the right, (1) To receive payment of the instrument; (2) To bring any action thereon that the indorser could bring; (3) To transfer his right as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement."

60. *Gulbranson-Dickinson Co. v. Hopkins*, 170 Wis. 326, 175 N.W. 93 (1919).

61. Quoted in note 57 *supra*.

62. LA. R.S. 7:36(2) (1950): "An indorsement is restrictive which . . . : (2) Constitutes the indorsee the agent of the indorser. . . ."

63. LA. R.S. 7:36(3) (1950): "An indorsement is restrictive, which . . . : (3) Vests the title in the indorsee in trust for or to the use of some other person."

64. UCC 3-304(2) (b): "The purchaser has notice of a claim against the instrument when he has reasonable grounds to believe that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty."

65. Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 168 (1953).

allow such an endorsement to preclude further negotiation, as is permitted in NIL section 47.

By including the term "for deposit" within its definition of "restrictive" endorsements, the Code settles a serious conflict which exists under the NIL.⁶⁶ But the Code is silent as to the status of the much-used endorsement, "Pay any bank or banker" and therefore fails to settle the controversy as to whether or not such endorsement is restrictive.⁶⁷

Conclusion

Generally speaking, the pertinent sections of the Code dealing with transfer and negotiation represent improvements over their counterparts in the NIL. Furthermore, the 1955 amendments to the Code have eliminated two of the greatest objections to the 1952 draft. The amended Code includes a definition of "restrictive" endorsement, and it permits a holder to convert a blank endorsement into a special one. Both provisions were omitted from the 1952 version of the Code. There still exists in the Code, however, a conflict between the definition of "bearer" in section 1-201(5) and section 3-204(2). This conflict is non-existent under the NIL and should be corrected. Until this and other difficulties are eliminated it is submitted that serious consideration to the adoption of the Code in Louisiana be deferred. However, in order to preserve the desired uniformity of the Code, such changes should be made by the Code's draftsmen and not by Louisiana individually.

Billy H. Hines

The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana—Material Alterations

One of the several defenses available to parties to negotiable instruments under the NIL and the earlier law merchant is to show that the instrument has been materially altered. Now that the Uniform Commercial Code has been drafted, it is the purpose of this Comment to analyze the contents of the Code provi-

66. BRITTON, *BILLS AND NOTES* 268 (1943).

67. In *First Nat. Bank v. Cross & Napper*, 157 So. 636 (La. App. 1934), the court held that such endorsement was not restrictive and did transfer title. See Britton, *Transfers and Negotiations Under the Negotiable Instruments Law and Article 3 of the Uniform Commercial Code*, 32 TEX. L. REV. 153, 170 (1953).