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DEBTORS' RIGHTS EMERGING: A COMPARISON OF SIGNIFICANT PORTIONS OF THE UNIFORM CONSUMER CREDIT CODE WITH EXISTING ILLINOIS LAW

I. INTRODUCTION

The Uniform Consumer Credit Code\(^1\) (hereinafter U3C) was drafted and promulgated by the National Conference of Commissioners on Uniform State Laws and was approved by them and the American Bar Association in 1968. One of the main features of the U3C is that it purportedly avoids the double coverage problem which arose with the passage of the Federal Consumer Credit Protection Act.\(^2\) The single coverage is a strong selling point of the legislation\(^3\) through which the drafters advocate the adoption of U3C to avoid "tinkering with the hodgepodge of existing state consumer credit legislation."\(^4\)

More importantly perhaps, the U3C gives the consumer certain rights which the other piece of legislation attributed to the National Conference of Commissioners on Uniform State Laws, the Uniform Commercial Code,\(^5\) either ignored,\(^6\) denied,\(^7\) or left to state law to remedy.\(^8\) These rights, the majority of which are grouped under the rubric "Limitations on Agreements and Practices,"\(^9\) will be compared in this comment with present Illinois law.

Primary concern will be with "consumer credit sale[s],"\(^10\) which are defined by U3C as sales of "goods, services, or an interest in land"\(^11\) by a commercial

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1 Citations herein are to the 1969 Revised Final Draft. Hereinafter the Uniform Consumer Credit Code will be cited as U3C to more readily distinguish it from the Uniform Commercial Code citation of U.C.C.

2 15 U.S.C. § 1601 et seq., Title I of which is better known as the Truth in Lending Act. This Act primarily governs those aspects of consumer credit which deal with disclosure, credit advertising, and garnishment. Unlike other federal legislation, it does not pre-empt the state law. The Act does not:

    - annul, alter, or affect, or exempt any creditor from complying with, the laws of any State . . . except to the extent that those laws are inconsistent . . . and then only to the extent of the inconsistency 15 U.S.C. § 1610.

   The Act gives the heads of federal agencies such as the Federal Reserve Board or the Labor Department power to exempt states from the provisions of the Act if they find state laws to be substantially similar to the Act. Illinois has not been exempted, 35 Fed. Reg. 5215 (1970) but Oklahoma, which adopted U3C in 1969 has been given an exemption as to all transactions, except 4 minor classes.

3 See generally Dunham, Consumerism, Competition, and Consumer Credit; Action Now, 57 Ill. Bar J. 718 (1969).

4 U3C Prefatory Note, xxxiii.

5 The Uniform Commercial Code, hereinafter cited as U.C.C.

6 U.C.C. § 3-305; the right of a consumer to assert a defense against a holder in due course.

7 U.C.C. § 9-504; the right to be free from a deficiency judgment after repossession of the collateral.

8 U.C.C. § 9-206 provides that an agreement not to assert defenses against the assignee is enforceable subject to any statute or decision which establishes a different rule; U.C.C. § 9-104 (d), which leaves the subject of wage assignments to state law.

9 U3C art. 2, pt. 4.

10 U3C § 2.104 (1).

11 Id.
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seller to a buyer who is a natural person for an amount not exceeding $25,000 (except in case of land sales), primarily for personal, family, household, or agricultural purposes. Other types of consumer transactions, such as consumer leases, and consumer loans will be referred to in passing. First, the law under U3C shall be stated. Second, existing Illinois law will be discussed, followed by a comparison or criticism of U3C and how its adoption would change Illinois law.

II. RIGHT OF THE DEBTOR TO A JUDICIAL HEARING PRIOR TO ENTRY OF JUDGMENT OR DEPRIVATION OF PROPERTY

1. Negotiable Instruments Prohibited

Under U3C, a consumer credit seller or lessor may not take a negotiable instrument, other than a check, as evidence of the obligation. If the seller does take a negotiable instrument, a holder lacks good faith if he takes the instrument with notice that it has been taken as a result of a consumer sale or lease. As a sanction for the taking of a negotiable instrument, the debtor is not obligated to pay the credit service charge. In addition, he has a right to recover from the person in violation (or from an assignee of that person’s rights who undertakes direct collection of payments) a penalty in an amount not in excess of three times the credit service charge. However, these sanctions are not available against a holder in due course, who may recover the outstanding debt from the buyer, including credit service charge. These sanctions seem to be inadequate if the instrument is negotiated to a holder in due course: the buyer’s remedies are diminished because of the seller’s unlawful taking of an instrument and probably through no fault of the buyer. Section 5.202 should therefore be amended to allow the buyer to recover not in excess of four times the credit service charge from his original seller, if the buyer’s instrument has been negotiated to a holder in due course.

Under existing Illinois law, the credit seller may take a negotiable instru-

12 U3C § 2.104, comment 1. Excluded generally are 30 day retail charge accounts, short term credit furnished by professional men and artisans on a one payment basis, as well as land sales (except as to the provisions on disclosure, U3C § 2.301, and debtor’s remedies, U3C § 5.201) where the credit service charge does not exceed 10% actuarial rate.
13 U3C § 2.106.
14 U3C § 3.104.
15 U3C § 2.304. There is a curious exception to this rule in sales or leases of goods primarily for agricultural purposes. This exception occurs in other sections as well. Reference shall be made back to this note whenever there is an agricultural exception. It has been criticized in Spanogle, Advantages and Disadvantages—A Comparison of the Present Maine Law and the U3C, 22 Maine L. Rev. 295, 314 (1970).
16 U3C § 2.403. Idaho, an adopting state has a non-uniform provision that a consumer sales note may be taken, but that it must be stamped “consumer paper” which makes it non-negotiable within the meaning of U.C.C.; ch. 181, § 10, Session Laws Idaho, [1971], 851.
17 U3C § 5.202. In addition he may be liable for a civil penalty for willful violation under U3C § 6.113.
18 U3C § 2.403.
ment, and negotiate it to a holder in due course without any sanctions other than those which inhere in the holder in due course concept. Thus, the adoption of U3C would bring about the almost complete demise of negotiable consumer paper.

2. Assignee Subject to Defenses

U3C provides two alternatives for the limitation of the assignee's right to enforce an agreement not to assert defenses. Alternative A would make the assignee subject to all claims and defenses of the consumer credit buyer. In no case could this liability exceed the amount owing to the assignee at the time the claim or defense is asserted. The buyer could not initiate the action against the assignee, but could only assert the claim as a matter of defense to, or setoff against, a claim by the assignee.

Under Alternative B the assignee may enforce the agreement not to assert defenses only if he:

(1) is not related to the seller; and
(2) acquires the contract in good faith and for value; and
(3) gives the buyer written notice of the assignment, identifying the contract, describing the goods or services, and stating:
(a) the names of the seller and buyer;
(b) the name and address of the assignee;
(c) the amount payable by the buyer; number, amounts, and due dates of the instalments; and
(d) in conspicuous writing that the buyer has a right to notify the assignee in writing within three months of any complaints which the buyer may have against the seller. If such notice is not received, the assignee will have a right to enforce the contract free of any claims that the buyer may have had against the seller; and
(4) receives no notice of complaint within three months of sending the notice to the buyer.

In Illinois such an agreement may be enforced if the assignee takes for value, in good faith, and without notice. Even in the absence of a clause, an agreement arises not to assert defenses, if the buyer signs a security agreement and a negotiable instrument as part of one transaction. If the buyer has given a negotiable instrument before he has received the goods, except as to purchases of automobiles, he may have 5 days following delivery to notify the assignee of

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20 U3C § 2.204, Alternative A. This is so, agreements to the contrary notwithstanding.
21 U3C § 2.204, Alternative B.
22 See U3C § 1.301 (14).
23 U3C § 2.412 provides that the buyer or lessor may pay the original seller until he receives notification of assignment, and may in addition request proof of such assignment.
any claim or right of action, provided that notice of this right is conspicuously set out in the retail instalment contract.\textsuperscript{25}

Thus, even the adoption of Alternative B would give the consumer greater protection without regard to whether the contract was signed before or after delivery of the goods. Not only would the time period be increased during which notice may be given to the assignee, but also the notice requirement would have to be separate and distinct from the signing of the original contract.\textsuperscript{26} However, neither the U3C\textsuperscript{27} nor Illinois law\textsuperscript{28} protects the purchaser of goods primarily for agricultural purposes in this respect.

3. Confession of Judgment Prohibited

U3C would not authorize any person to confess judgment on a claim arising out of a consumer credit sale, lease\textsuperscript{29} or loan.\textsuperscript{30} The majority of states have already prohibited these clauses, however, Illinois is in the minority. Confession of judgment clauses are specifically permitted by statute.\textsuperscript{31} The harsh results are sought to be ameliorated by Supreme Court Rule 276, which allows a judgment obtained by confession to be opened if the motion is accompanied by a verified answer which discloses a prima facie defense on the merits.\textsuperscript{32} Of course, no defenses may exist if the assignee is allowed to enforce an agreement not to assert them.\textsuperscript{33} The assignee may also have a negotiable instrument, so that even without a clause, the debtor would be relegated to the defenses available against a holder in due course.\textsuperscript{34} It may be seen that significant abuse and oppression comes about as a result of use of the confession clause together with other devices designed to give the creditor a short cut way of satisfying the outstanding obligation. The abolition of the confession of judgment practice would bring Illinois in line with the majority of states.

4. Assignment of Earnings

U3C makes unenforceable any assignment of earnings for payment of, or

\textsuperscript{27} U3C has been introduced in the Illinois House HB 2743, and § 2-404 thereof provides for a 60 day cut-off period.
\textsuperscript{28} U3C §§ 2.404, Alternatives A and B. See, supra n.15.
\textsuperscript{30} U3C § 2.415.
\textsuperscript{31} U3C § 3.407.
\textsuperscript{33} See, supra n.24.
as security for, a debt arising out of a consumer credit sale, lease or loan.

The employee may authorize deductions only if such authorization is revocable.

In Illinois an employee may assign 15% of the gross of each wage payment to pay or secure an "existing debt." Subject to certain disclosure requirements, the assignment may even be good for two years as to future employers. Under a valid assignment the creditor may make a demand on the employer if:

1. the obligation is and has been in default 40 days or more at the time of the demand;
2. the employer is shown the assignment and it contains a correct amount;
3. 20 days prior to making the demand the creditor has served both employer and employee with notice of his intention to make a demand; and
4. the employee has not given notice of a defense to the creditor or the employer within 20 days after receiving the notice of intention to make a demand.

The enactment of U3C would abolish what is probably the bulk of wage assignments, but it is not designed to abolish all state law on the subject. Wage assignments arising out of non-consumer sales, leases, or loans would still be allowed.

5. Limitations on Garnishment

U3C allows no pre-judgment attachment of earnings if the debt for which garnishment was sought arose out of a consumer credit sale, lease or loan.

35 U3C § 2.410.
36 U3C § 3.403.
41 Ill. Rev. Stat. ch. 48, § 39.2 (1969). This provision is modified further by Ill. Rev. Stat. ch. 121/2, § 2621 (1969), which prohibits communication with employer to collect a debt, unless debt is 30 days in default, and the employee has been given 5 days prior notice of intention to communicate with the employer.
42 Ill. Rev. Stat. ch. 48, § 39.4b (1969). If the employer receives notice of a defense within the 20 day period, he need not pay the creditor, unless he gets a copy of a subsequent agreement between the creditor and employee authorizing such payment. The employer must start payments within 5 days of receiving the demand, unless notice of defense is received.
43 These would include assignments to secure land sales where the credit service charge is under 10% actuarial rate, 30 day retail charge accounts and short term credit furnished by professional men and artisans on a one payment basis, sales by non-commercial creditors, and sales for other than consumer purposes.
44 U3C § 5.104. Much like the ban on wage assignments, the limitations on garnishment leave non-consumer credit transactions unaffected. One writer, Clark, Uniform Consumer Credit Code, Assessing its Impact on One State and Plugging its Loopholes, 18 U.
After the creditor has obtained a judgment, he may garnish from the debtor’s disposable earnings for any work week a sum which exceeds the greater of:

1. 75% of the disposable earnings for that week; or
2. 40 times the federal minimum hourly wage, $64.

The employee may not be discharged because his earnings have been subjected to garnishment “for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.” Sanctions for violation provide that the employee may recover lost wages not in excess of six weeks and be reinstated.

Illinois law provides that a creditor may not attach wages of the debtor except pursuant to a court issued “deduction order” and only then after he has become a judgment creditor as a result of “any judgment.”

Earnings exempt from garnishment may be calculated to be the greatest of:

1. $65 per week of salary, wages, commissions, bonuses, and retirement or pension payments if the debtor is the head of the family who contributes substantially to its support; or


45 U3C § 5.105 (1) (a) defines disposable earnings as those remaining after deductions required to be withheld by law, or roughly net earnings.
46 U3C § 5.105 (2) (a), (b). The federal minimum hourly wage under 29 U.S.C. § 206 (a) (1) is $1.60, and therefore $64 would be exempt from garnishment.
47 U3C § 5.106. Again in this respect the U3C is not substantially similar to or stricter than Subchapter II of the Consumer Protection Act because of the Act’s “any debt” coverage, and the U3C’s narrower consumer debt requirement. If an exemption were granted in a state enacting U3C, an employee could be discharged if his earnings were subjected to garnishment arising from a 30 day retail charge account on a one payment basis, if the case was not otherwise regulated by state law. However, if the exemption was not granted, and there was double coverage, the employee could not be discharged under 15 U.S.C. § 1674, which subjects the employer to a fine or imprisonment for willful discharge due to garnishment “for any one indebtedness.”

If the U3C were left as is, and rightfully no exemption were given from the action of the federal act, it would still be important for the employer who wants to discharge for more than any one debt to determine if the debt arose from a consumer transaction or not, for the employer is subject to a suit for back pay and a reinstatement order under U3C § 5.202(6). If this is done, a provision should be added that the employer would not be liable if he discharged the employee under the mistaken belief that the garnishments were not from consumer debts, if he relied on written statements of the employee for his belief, but was misled. Cf. Ill. Rev. Stat. ch. 62, § 73 (1969).

The U3C section on garnishment should not be left as is, but should be made to apply in its terms to garnishment arising from any debt.

48 U3C § 5.202(6).
50 Id. A judgment obtained by confession must be confirmed in order for the confessor to be a “judgment creditor.”
(2) $50 per week of the same sources if debtor is not the head of the family; or
(3) 85% of the gross wages, salary, commissions and periodic retirement or pension payments; or
(4) an amount prescribed under 15 U.S.C. § 1673, which provides for exemption of 75% of weekly earnings after deductions or 30 times the federal minimum hourly wage, $48.  

Illinois follows the federal act  in that it prohibits discharge for "any one indebtedness."  

While both Illinois and the U3C prohibit attachment prior to judgment, it is difficult to determine which gives the employee a greater exemption. U3C provisions on garnishment are intended to compliment rather than to displace local garnishment laws, and hence the comparison must be made with a consumer employee. If the consumer employee is the head of the family, he gets a slightly greater exemption under the present Illinois law than he would get under U3C. The opposite is true if he is not the head of the family. If deductions from the consumer employee's wages exceed 10%, he would get a greater exemption under U3C; but if they do not exceed 10%, he would get greater protection under Illinois law whether or not he was the head of the family. In any case the exemption may never be less than that prescribed by the federal act, for if there is a conflict, federal law supercedes state law. The U3C would however give the consumer employee greater protection against discharge due to garnishment than either the Illinois or federal law. Garnishment arising from non-consumer debts would not be affected, unless the U3C section were expanded to be co-extensive with the federal act.  

III. RESTRICTIONS ON COLLATERAL AND DEFICIENCY JUDGMENTS

1. Collateral Taken in Single Isolated Consumer Credit Sale

Under U3C, a consumer credit seller may take a security interest in the property sold, but the ability of the seller to take a security interest in additional property of the debtor is severely restricted. The seller may not take a security interest in other goods or land of the buyer unless the goods or services sold become closely connected with the additional goods or land in which the

54 U3C § 5.105, Comment 2.
55 §65 exemption under Illinois law, $64 under U3C.
56 §50 exemption under Illinois law, $64 under U3C.
57 Illinois exempts 85% of gross wages, while U3C exempts 75% after deductions.
60 U3C bars discharge for garnishment arising from any consumer debt, while federal and Illinois law bar discharge for garnishment for one indebtedness. This apparently means that the employee may be discharged by reason of garnishment for 2 or more debts.
61 As suggested in n.47, supra.
62 U3C § 2.407.
security interest is taken, and the debt secured is substantial. A security interest in additional goods of the buyer may be taken if:

(1) the goods sold are installed in or affixed to the additional goods; or the services sold maintain, repair or improve the additional goods in which the security interest is sought to be taken; and

(2) the debt secured is $300 or more.\(^6^3\)

The seller of goods or services may take a security interest in land of the buyer if:

(1) the goods sold are affixed to the land, or the services sold maintain, repair or improve the land in which the security interest is sought to be taken; and

(2) the debt secured is $1000 or more.\(^6^4\)

A consumer credit seller of land\(^6^5\) may take a security interest in the land sold, but not in additional land or goods of the buyer.\(^6^6\)

The only restrictions on the taking of a security interest in a single isolated consumer credit sale in Illinois are that any security interest taken must be clearly described. In a consumer transaction, Illinois law also prohibits the taking of a security interest in property acquired 10 days after the original transaction.\(^6^7\)

2. Collateral Taken in a Series of Consumer Credit Sales

If there has been a series of consumer credit sales between the same buyer and seller, there are two ways under U3C by which the seller may take a security interest in additional goods of the buyer.\(^6^8\) If the seller has an existing security interest in other property of the buyer (arising from a prior sale) he may secure the debt arising out of the present sale by taking a security interest in such other property.\(^6^9\) He may also take a security interest in the property presently sold to secure the debt arising out of the prior sale.\(^7^0\) The term applied to this practice is the taking of cross-collateral.

\(^{63}\) Id. This section does not apply to sales primarily for agricultural purposes. See U3C § 2.407, Comment 5 and n.15 supra. For example, a security interest could be taken in the whole car which was not the subject of the sale if only the motor had been replaced for $300 or more.

\(^{64}\) U3C § 2.407, Comment 2. A seller of dancing lessons may not take a security interest in the goods or land of the buyer, but a painter or carpenter who works on the buildings may if the debt is $1000 or more.

\(^{65}\) One who sells land for personal use and charges an actuarial rate in excess of 10\%, U3C § 2.104(2)b. See generally, Meyers, Real Estate Transactions, Rates and the Uniform Consumer Credit Code, 23 Okla. L. Rev. 263 (1970).

\(^{66}\) U3C § 2.407, Comment 3.


\(^{68}\) U3C § 2.408.

\(^{69}\) Such other property now secures past and present debts.

\(^{70}\) Seller may as well take a security interest in the property presently sold to secure the present debt. If he does, the property presently sold would secure past and present debts.
In Illinois this practice is allowed, but UCC and Illinois differ as to the time when the cross-collateral security interests may be released. Under UCC they are released on a first in, first out basis. Normally the total amount of the debts secured by cross-collateral are consolidated so that the debtor has a single schedule of instalments in payment of the consolidated debt. Even though this is done, the creditor must allocate all payments to the first debt incurred, until that debt is paid off, at which time the security interest terminates. In Illinois, on the other hand, payments on the consolidated debt are allocated “to all of the various purchases in the same ratio as the original cash sales prices of the various purchases bear to the total of all.” This allows the seller to keep a security interest in all the goods until the last penny has been paid. There is great potential for coercion and abuse in this method of release of security interests. For example, a consumer may have made a long series of purchases and then defaults with a small amount owing. Nevertheless, the seller may repossess the entire series of purchases even though he may have satisfied the outstanding obligation by repossessing only one of the purchases.

3. Deficiency Judgments

UCC provides that if the debtor defaults on a debt arising from a consumer credit sale, the cash price of which was $1000 or less, the seller may not repossess all collateral taken, (subject to the restrictions on taking of collateral as a security interest) and in addition seek a deficiency judgment if the sale of the collateral does not satisfy the unpaid balance. The seller has an option either to repossess the goods, or to seek a personal judgment. If he seeks a personal judgment, the seller may not subject the goods which he could have otherwise repossessed to a levy or sale on execution. If the seller repossesses, he need not sell the collateral if the security interest was taken only in the goods sold. But if the security interest was acquired in additional goods of the buyer, the

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72 UCC § 2.409(1).
74 This was the case in Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965), where the court held that a clause allowing the creditor to retain a security interest on all cross-collateral until the entire consolidated debt was paid off, required a hearing as to unconscionability.
75 UCC § 5.103(1), (2). However, the debtor may be liable in addition to the creditor having repossessed if the debtor has damaged the collateral, or has wrongfully failed to make the collateral available after default and demand, UCC § 5.103(5).
76 Under a cross-collateral arrangement, the creditor may levy on goods first in if their price has been paid.
77 UCC § 5.103(6) (b). If the seller seeking a personal judgment could levy on the collateral, he could avoid the limitations imposed on deficiency judgments.
78 UCC § 5.103 (2). This has been criticized in Hogan, Integrating the UCCC and the UCC—Limitations on Creditors Agreements and Practices, XXXIII Law & Contemp. Prob. 686, 693-94 (1969). The basic problem is that the creditor may receive a windfall if the debtor defaults after having paid a substantial part of the debt, and the creditor is allowed to keep the collateral without having to sell it for the debtor’s benefit.
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seller must sell the goods if the buyer in default insists. A security interest in additional goods of the buyer, as stated before, may be obtained either by the goods or services sold becoming closely associated with the additional goods, pursuant to a cross-collateral arrangement, or in a transaction not covered by the limits on taking of collateral.

Under Illinois law the creditor's remedies are cumulative and the secured party may "reduce his claim to judgment" or "proceed without judicial process." After repossession he may "sell, lease or otherwise dispose of the collateral subject to a notice of sale to the debtor (unless special circumstances are present) and subject to the debtor's right to redeem before the sale by paying the unpaid balance." If the collateral is sold, "[t]he secured party must account to the debtor for any surplus, and . . . the debtor is liable for any deficiency." If the debtor has paid 60% of the cash price, the creditor must (unless otherwise agreed) dispose of the collateral within 90 days or suffer a recovery by the debtor in conversion. In addition the Retail Installment Sales Act provides that if the debtor has paid 60% of the deferred payment price (a greater amount than under the Uniform Commercial Code) and the buyer surrenders the goods in good condition to the seller without judicial proceeding, the seller must elect in 5 days to either (a) retain the goods and release the buyer from further obligation or (b) return the goods to the debtor at the seller's expense, and be limited to an action to recover the balance of the indebtedness. In every other case the seller must dispose of the goods unless the debtor fails to object within 30 days of a written proposal by the seller to retain the goods in full satisfaction.

In the situation under the U3C where the repossessing creditor need not sell the collateral, a total reversal is taken from the scheme set up under the

79 U3C § 5.103(3). Comment to this section states that in the case of repossession of goods which were not the subject of the sale, seller is barred from a deficiency judgment. However, it goes on to state that the rights of the buyer with respect to compulsory disposition of collateral which was not the subject of the sale and the recovery of any surplus on disposition are defined in U.C.C. §§ 9-504, 9-505. This then means that although the debtor is not liable for a deficiency, he may recover a surplus in the hands of the debtor, or force the creditor to dispose of the collateral. This result follows from the comment to U3C § 1.103, which states:

[i]n the event of conflict between this Act and Article 9 of the UCC the provisions of this Act control.

88 Ill. Rev. Stat., ch. 121¼, § 526 (1969). This does not prevent the creditor from levying on the returned goods however.
90 See, supra n.78.
Uniform Commercial Code. A number of questions arise which are unanswered. First, it is clear that if the seller resells the collateral and does not satisfy the debt, he may not recover the deficiency from the debtor. If there is a surplus in the proceeds of the sale, may the buyer recover such a surplus? It could be argued that he should not, for the creditor need not have resold, and that there is no requirement that the creditor give notice if he does in fact decide to sell. Under this analysis Section 5.103(2) seems to be a give and take proposition. Second, if the creditor repossesses, does the debtor have a right to redeem before the creditor has disposed of the collateral? As a practical matter the honest creditor would welcome the opportunity, but what of the case where the debtor has paid a substantial percentage, and the creditor would be financially better off by not allowing the debtor to redeem? One writer suggests that the results might have been unintended by the U3C drafters, and would make repossessed collateral subject to Article 9 of the Uniform Commercial Code, except as to the creditor's cumulative remedies. The debtor would then have the right to redeem, could recover a surplus, and would be entitled to notice of the resale, as well as being able to force the creditor to dispose of the property. This latter right of the debtor may be exercised in such a way as to work an injustice on the creditor. For example, the debtor may force a resale even where he knows that the goods are highly depreciated, and that there is no chance of a surplus from the resale. In such a case, the debtor may be forcing the creditor to take a loss, secure in the knowledge that he is free from a deficiency judgment. It seems that making Article 9 applicable is not a panacea and that special rules must be developed to regulate recovery of surplus, right to redeem, and the right to force a resale around the concept of no deficiency judgment. The old rules do not seem to serve the new concept.

IV. Conclusion

The use of credit has increased in recent years by astronomical proportions, and it no doubt has the potential of replacing money altogether. With this expansion it seems that insufficient emphasis has been placed on the differing policy factors underlying the extension of consumer credit and those underlying the extension of commercial credit. While the use of negotiable instruments, cut-off clauses, and cognovit clauses may be desirable and meaningful as between merchants who understand their implications; when these devices are transposed to a consumer context, they are an abomination! The U3C serves to emphasize this distinction, unlike the U.C.C., while leaving purely commercial transactions free from restrictions.

91 The debtor has this right under U.C.C. § 9-506.
92 See Clark, Uniform Consumer Credit Code; Assessing Impact on One State and Plugging Its Loopholes, 18 Kan. L. Rev. 277, 302 (1970). Under this solution repossessed property would be treated the same whether or not it was the subject of the sale, and there would be no practical distinction between U3C § 5.103 (2) and (3).
93 U3C covers in limited aspects what it calls “consumer related sales,” which encompass transactions such as a credit sale by a seller not regularly engaged in similar credit
The U3C restrictions on agreements and practices will no doubt restrict the availability of credit. Depriving the lenders and sellers of their unlimited short cut methods will make them more cautious in extending the credit in the first place. It seems that credit should not be sought to be extended to everyone at the price of having to suffer summary collection devices and overbearing tactics. Another alternative, that of consumer education, would have the same effect on creditors, except that it would make available credit less desirable. Consumer education should always be emphasized but any practical results from it would probably be a long time in coming. Adoption of the U3C would have a more immediate effect on much abused credit practices.

Perhaps most importantly, in addition to giving the consumer substantial protection from abusive devices, the adoption of the U3C will, with respect to the provisions herein discussed, dispel the bad light in which the consumer sees the creditor.

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