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## ***PUBLICATIONS***

### **BOOKS:**

**Revised CORBIN ON CONTRACTS, VOLUME 13, DISCHARGE OF CONTRACT** (Lexis Nexis October 2003). In 1988, Distinguished Professor Joseph Perillo undertook the revision of the multi-volume treatise of Corbin on Contracts, published by Matthew Bender and Lexis-Nexis. As supervising editor of the revision, Professor Perillo recruited authors to write individual volumes. My book, volume 13, addresses the various methods of discharging contractual duties such as performance, tender, accord & satisfaction, rescission, novation or total breach. The original materials, found in volumes 5A and 6, predated the Restatement (Second) of the Law of Contracts, the Convention on Contracts for the International Sale of Goods, the UNIDROIT Principles of International Contracts, and only contained skeletal discussions of original Uniform Commercial Code. My book seeks to provide a comparative assessment of the principles of discharge under the various legal regimes while maintaining Arthur Corbin's style and methodology.

### **ARTICLES:**

**Forward: Symposium -- The Private Ordering of Contractual Relations: Contracting Out of the UCC, 40 Loy. L.A. Law Rev. 1 (2006).** In December of 2004, I assumed responsibility for placing and coordinating a symposium issue of articles on contracting out of the Uniform Commercial Code. My piece and three others were originally part of a live symposium during the 2004 Spring Meeting of the Business Law Section of the American Bar Association. Thirteen manuscripts are included in the issue.

**Contracting Out of UCC Article 2: Minimizing The Obligation Of Performance & Liability For Breach, 40 Loy. L.A. L. Rev. 401 (2006).** A seller confronted with an expanding global market may desire to define its business risk and increase efficiency by using the same standard terms in both its domestic and international contracts. This article addresses the seller's ability to opt-out of the Uniform Commercial Code in domestic transactions. Indeed, the goal of this article is to ascertain the extent to which a seller may "push the envelope" in minimizing: (1) its obligation of performance, (2) the buyer's right to complain regarding the quality of the seller's performance, and (3) the seller's responsibility for failing to perform as obligated. This article is not an endorsement of such conduct but rather an exercise to define the parameters imposed by the UCC.

**Arkansas Sales Law: The Shifting Landscape, 57 Ark. L. Rev. 835 (2005).** The Arkansas Legislature codified Revised Article 1 in March of 2005. The purpose of this

article was to preview for the legislature and the courts the impact of the revision of Article 1 on existing Arkansas authority; distinguish provisions of the Convention on Contracts for the International Sale of Goods and Article 2; and highlight weaknesses in existing case authority construing Article 2. Despite making the journal's October submission deadline, volume 57 was not distributed until several weeks after the legislature codified Revised Article 1.

**Discharge of Contract – Performance & Tender: What Are the Operative Principles for a Global Community**, 54 Fla. L. Rev. 451 (2002). This article was an early release of the revised Corbin materials on two methods of discharge, performance and tender. My goal was to offer a “trial balloon” of the longer work product in advance of publication.

**Foreword: Symposium on Revised Article 1**, 54 SMU L. REV. 469 (2001). As chair of the American Bar Association Subcommittee on UCC Article 1, I organized and placed this symposium on Revised Article 1. My goal was to heighten awareness on the significance of Article 1 to commercial transactions. Contributing authors include, among other scholars: Professors James J. White, Fred H. Miller, and Brian Hull. SMU Law Review, in breach of its agreement to publish the Article 1 symposium as a discrete volume, merged the Article 1 symposium with articles on the revision of Article 2.

**Symposium on Revised Article 1: Preemption & Supplementation Under Revised 1-103: The Role of Common Law and Equity in the New U.C.C.**, 54 SMU L. REV. 495 (2001). My submission for the symposium issue offered an analytical framework for determining the relative relationship between the Code and relevant common law or equitable principles. The undisclosed purpose of the article was to provide a record of the Drafting Committee's deliberations on the inclusion of a provision on unconscionability in Revised Article 1. Before the ink dried on the first draft of the proposed revision without the inclusion of a proposed provision on unconscionability, some suggested the deletion acknowledged the drafters' conclusion that application of the doctrine was inappropriate beyond the confines of Articles 2 and 2A.

**Revised Article 3: “[Revise] it Again, Sam!”**, 72 HOUSTON L. REV. 2015 (Fall 1999). The recommendation made in this article, that the suretyship provisions of Revised Article 3 be further revised to conform to the Restatement (Third) of the Law of Suretyship and Guaranty, was implemented in the 2002 amendments to Revised Article 3.

**Foreword, Symposium: Teaching Sales Law in a Global Context: the Reciprocal Influence of Domestic Sales Law (Article 2) on Private International Law (CISG & UNIDROIT) and Private International Law on Revised Article 2**, 72 TULANE L. REV. 1925 (1998). As chair of the AALS Section on Commercial and Related Consumer Law, I organized and placed this symposium as a supplement to the oral symposium presentation at the 1998 AALS Annual Meeting. Contributing scholars included, among others: Professors E. Alan Farnsworth, James J. White, Amy Boss, Peter Linzer, and Peter Winship.

**Symposium Teaching Sales Law in a Global Context . . . : Exemption for Nonperformance:** UCC, CISG, UNIDROIT Principles – A Comparative Assessment, 72 Tulane L. Rev. 2015 (1998). My submission for the symposium provided a comparative assessment of the relative rules on discharge because of the occurrence of an unforeseen contingency.

**Arkansas' Revised Article 3: User Caution Advised!!**, 16 U.A.L.R. L. J. 573 (1994). This article is a brief review of salient provisions of Revised Article 3 and potential traps for those who are unfamiliar with the statute.

**Accommodating Spouses: Regulation B and Revised Article 3, The Suretyship Law Complication**, 30 UNIV. RICH. L. REV. 387 (1996). Suretyship engagements that are made on negotiable instruments, accommodations, are as other suretyship promises subject to the Equal Credit Opportunity Act and its implementing regulation, Regulation B. This article addresses the effect of Regulation B on suretyship transactions under Revised Article 3.

**Coordinating the Expedited Funds Availability Act with Regulation J and U.C.C. § 4A-404:**

**Acceptance, Availability, and Cancellation**, 25 U.C.C. L. J. 254 (1994). This piece addressed the complications arising from correlating the Expedited Funds Availability Act that requires banks to make deposited funds available for withdrawal within specific time frames and the receipt of funds for deposit by wire fund transfer.

**Abrogation of the Surety's Right of Discharge on Release of the Principal Obligor Under Revised Article 3: A Creditor's Tools for Maximizing of Self-Interest**, 44 OKLAHOMA LAW REVIEW (1992). This article urged states to include a notice requirement in their revision of former Article 3's suretyship provision and provided suggested statutory language for codification by states. Comment b to section 38 of the Restatement (Third) of the Law of Suretyship and Guaranty, without requiring notice, addresses the benefits of notice to the secondary obligor as suggested in my article.

**God Talk By Professors Within The Classrooms of Public Institutions of Higher Education: What is Constitutionally Permissible?**, with Bryon R. Johnson & Otto Jennings Helweg, 25 AKRON L. REV. 289 (1991). This co-authored piece addresses the ethical and constitutional limitations on a professor's "God talk" within the classrooms of higher education and grew out of an on-campus symposium among Christian professors from various disciplines at the University of Memphis, formerly Memphis State University.

**A Payee Who is a Holder In Due Course May Be Subject to Personal Defenses Arising From Unauthorized Acts or Promises By an Agent**, 9 ST. LOUIS PUB. L. REV. 191 (1990). Despite this article's unfortunate title, the piece was the impetus for the clarification of Article 3's agency law provision, section 3-403, by the Revised Article 3 drafting committee. The manuscript posited the supplementation of Article 3 by the general rules of agency and demonstrated that an assessment of an obligor's right to

assert defenses must include the application of agency principles, including imputed notice rules.

#### SOLICITED COMMENTARY:

Comments on the proposed revision to UCC Revised Article 3, section 3-605 and other sections relevant to suretyship on negotiable instruments, December 27, 2002, to Donald J. Rapson, member of the Permanent Editorial Board for the Uniform Commercial Code, the Revised Article 3 Drafting Committee, and author of the commentary to the amendments to Revised Article 3.

Comments on the proposed revisions to UCC Article 3, sections 3-302 and 3-305, November 28, 1989, to Donald J. Rapson, member of the Permanent Editorial Board for the Uniform Commercial Code.

#### ***SIGNIFICANT CLE MATERIALS (American Bar Association & ALI-ABA)***

By-Pass Surgery: Contracting Out of UCC Article 2 , **American Bar Association, Section of Business Law, UCC Forum**, By-Pass Surgery: Contracting Out of UCC Article 2 and the Ethical Limitations in Doing So, April 2004.

Multiple Sureties Under the Restatement (Third) of Suretyship, reprinted in Program Materials, Avoiding Career Ending Mistakes -- Guaranties and the New Restatement of Guaranty and Suretyship, **ABA Section of Business Law**, March 1996.

Impact of the Restatement of Suretyship on UCC Transactions, with Neil B. Cohen, Reporter--Restatement of Suretyship and Guaranty, printed in **ALI-ABA** Course of Study Materials, The Emerged and Emerging New Uniform Commercial Code (December 1994).

Revised Article 3 -- Two Significant Changes: Good Faith and Representative Signatures, printed in **ALI-ABA** Course of Study Materials, The Emerged and Emerging New Uniform Commercial Code (December 1994).

Suretyship Issues Concerning Secured Lenders, with Neil B. Cohen, Reporter--Restatement of Suretyship and Guaranty, printed in **ALI-ABA** Course of Study Materials, The Emerged and Emerging New Uniform Commercial Code (December 1993).

Revised Article 3: Suretyship and Accord & Satisfaction, printed in **ALI-ABA** Course of Study Materials, The Emerged and Emerging New Uniform Commercial Code (December 1993).

#### ***PRESENTATIONS, PROFESSIONAL SOCIETIES AND ASSOCIATIONS***

American Bar Association  
Business Law Section  
UCC Committee Member

**Chair**, Subcommittee on Article 1 of the UCC (8/96 - 7/00)  
**Chair**, Subcommittee on Payment (3/07 – 8/10) (member since 1992)  
ABA Task Force on Suretyship (1992 - 1998)  
Arizona State Bar Association (admitted October 1983)  
Arkansas Bar Association (admitted April 1, 1997)  
Association of American Law Schools  
Commercial & Related Consumer Law Section **Chair** 1997-98  
Executive Committee Member 1995, 1996  
Christian Law Professors' Fellowship (planning committee) 1996.  
American Bar Association: Panelist, By-Pass Surgery: Contracting Out of UCC Article 2 ,  
Section of Business Law, UCC Forum, By-Pass Surgery: Contracting Out of UCC Article 2  
and the Ethical Limitations in Doing So, April 2004.  
ALI-ABA: Panelist, American Law Institute-American Bar Association Continuing  
Education Program: The Emerged and Emerging New Uniform Commercial Code,  
December 1993, 1994.  
AALS: Panelist, 1994 Association of American Law Schools, Commercial and Related  
Consumer Law Section Program, "Beyond the Text: Techniques for Teaching  
Transactions."  
Arkansas Bar Association: Presenter, 1994 Joint Annual Meeting Arkansas Bar  
Association and Arkansas Judicial Council (June 1994).  
ABA: Panelist, 1996 American Bar Association Spring Meeting, Section of Business Law  
Program, "Avoiding Career Ending Mistakes--Guaranties and the New Restatement of  
Guaranty and Suretyship."  
Geneva College, Center for Law and Public Policy, Faith and Law Lecture Series,  
February 1996:  
**CLE Pittsburgh Attorneys** -- "Revised Article 3 of the Uniform Commercial Code: A  
Potpourri of Creditor's Issues;"  
**University of Pittsburgh School of Law, Christian Legal Society** – “Can God Efficiently  
Breach a Promise?”;  
**Geneva College Public Lecture** -- "Revealing the Character of God as a Legal  
Professional."  
ABA: Panelist, program participant for video taping of *Economy in Teaching: Learning  
Business Law by Doing It*, for the Spring Meeting of the American Bar Association, April  
1997.  
ABA: Panelist, Business Law Section Spring Meeting, UCC Forum, By-Pass Surgery:  
Contracting Out of the UCC, April 2004.

## **AWARDS**

**Faculty Excellence Award** – Research, 2003, UALR William H. Bowen School of Law.

Delta Theta Phi Legal Fraternity, UALR William H. Bowen School of Law, **Professor of  
the Year Award**, 2000;

Cecil C. Humphreys School of Law Student Bar Association, Memphis State University,  
**Professor of the Year Award** 1989-90.

**Nominated for the Faculty Excellence Award – Teaching** by individual students in 1993, 2003 & 2005

## ***EDUCATION***

### LEGAL:

University of Kentucky College of Law, Lexington, Kentucky J.D. Degree, December 1982.  
Honors & Activities: Kentucky Law Journal; ranked first in Oral Advocacy Moot Court Rutledge Club, First Year Competition; Black Law Students Association.

### GRADUATE:

University of Kentucky, Lexington, Kentucky  
M.A. English & Theater Arts 1970.

### UNDERGRADUATE:

Hanover College, Hanover, Indiana  
B.A. Speech & Drama 1969.  
Honors & Activities: Theta Alpha Phi (Dramatic Honorary); Tassels Senior Women's Honorary (Mortar Board); Elected Most Outstanding Senior Woman, 1969; Dean's List.

### OTHER:

George Mason University School of Law, Economics Institute for Law Professors. July 1991.

## ***EMPLOYMENT HISTORY***

Distinguished Professor of Law, University of Arkansas at Little Rock, Little Rock, Arkansas  
August 1992 - Present  
Contracts, Agency & Partnership, Commercial Paper (Articles 3, 4, 4A), Sales (Articles 2, 2A, CISG), International Business Transactions.

Visiting Professor of Law, University of Houston Law Center, Houston, Texas  
August 2004 - December 2004  
Contracts and International Business Transactions

Associate Professor of Law, Memphis State University, Memphis, Tennessee (with tenure)  
August 1986 - December 1992  
Contracts, Sales, Commercial Paper, Agency & Partnership.

Associate, Lewis and Roca, Phoenix, Arizona  
March 1983 - June 1986  
Corporate Law, Commercial Litigation, Immigration Law.

Research Assistant, Professor John Garvey, University of Kentucky, College of Law,  
Summer 1980

Responsible for research of case and statutory law to support legal theories.

See 94 Harvard Law Review 1756 (June 1981).

Assistant Dean of Students, University of Kentucky, Lexington, Ky.

September 1975 - December 1977

Advisor to Panhellenic Council, Women's Honoraries; designed and implemented officer training, supervised sorority rush (1800 women students).

### **SELECTED UNIVERSITY & LAW SCHOOL SERVICE:**

Faculty Senate Representative (University of Memphis) 1986 - 1988  
Chair, Administrative Policies Committee 1987 - 1988  
Member, Executive Committee

Faculty Development (UALR) 2000 - 2004  
Chair 2003 - 2004  
2005 - 2006

The 2003-2004 Committee promulgated and recommended adoption of minimum standards for teaching effectiveness, scholarship, and service.

The 2005-2006 Committee sponsored teaching effectiveness presentations on teaching the Post Modern Student and Deciphering their Evaluations.

Promotion & Tenure Committee 1998 - 1999  
Chair

Appointed and served on the subcommittee that promulgated for adoption promotion and tenure standards for clinical and legal writing faculty.

### **CITATIONS TO PUBLICATIONS:**

13 CORBIN ON CONTRACTS, DISCHARGE OF CONTRACTS (Lexis Nexis October 2003).

**Cited in:** Mextel, Inc. v. Air-Shields, Inc., 2005 WL 226112 (E.D. Pa. 2005);

**Cited in:** Palmer v. Murphy, 2004 WL 1166592 (Cal. App. 2004);

**Cited in:** Brown v. Sol, 2004 WL 2165638 (Conn. Super. 2004) (Discharge by Release § 67.9(1));

**Cited in:** San Joaquin Community Hosp. v. San Joaquin Valley Medical Group, 2004 WL 1398551 (Cal. App. 2004) (Discharge by Termination of a Contract--Exercise of a Power Reserved § 68.9);

*Secondary Authority:*

**Cited in:** Comment, *From Red Barn to Facility: Changing Environmental Liability to Fit the Changing Structure of Livestock Production*, 93 Cal. L. Rev. 797 (2005) (§ 68.9);

**Cited in:** B.E. Witkin and Members of the Witkin Legal Institute, Summary of California Law, *Contracts* § 705, p. 640 (9th ed., Supp. 2004);

**Cited in:** B.E. Witkin and Members of the Witkin Legal Institute, Summary of California Law, *Contracts* § 867, p. 780 (9th ed., Supp. 2004);

**Cited in:** Jason J. Stover, *No Cure, No Problem: State Franchise Laws and Termination for Incurable*, 23-FRANC. L.J. 217 (Franchise Law Journal) (2004).

Symposium on Revised Article 1: *Preemption & Supplementation Under Revised 1-103: The Role of Common Law and Equity in the New U.C.C.*, 54 SMU L. REV. 495 (2001).

**Cited in:** Hawkland, Uniform Commercial Code Series § 1-103:2 [Rev], n.4 (2005).

**Cited in:** Richard E. Speidel & Linda J. Rush, *Commercial Transactions – Sales, Leases and Licenses* (2nd ed. 2004);

**Cited in:** Jonathan C. Lipson, *Remote Control: Revised Article 9 and the Negotiability of Information*, 63 OHIO ST. L.J. 1327 (2002);

**Cited in:** Robyn L. Meadows, *Code Arrogance and Displacement of Common Law and Equity: A Defense of Section 1-103 of the Uniform Commercial Code*, 54 SMU L. Rev. 535 (2001).

Revised Article 3: "[Revise] it Again, Sam!", 72 HOUSTON L. REV. 2015 (Fall 1999).

**Cited in:** Gregory E. Maggs, *Patterns of Drafting Errors in the Uniform Commercial Code and How Courts Should Respond to Them*, 2002 Univ. Ill. L. R. 81 (2002);

**Cited in:** Steven B. Dow, *The Impostor Rule and the Nature of Forgery under the Revised Uniform Commercial Code: a Doctrinal Analysis and Some Suggestions for the Drafting Committee*, 39 Am. Bus. L.J. 25 (2001);

**Cited in:** Steven B. Dow, *The Impostor Rule and the Problem of Agency under the Revised Uniform Commercial Code: New Risks for Bank Customers?*, 106 Com. L.J. 199 (2001);

**Cited in:** Timothy R. Zinnecker, *Extending Enforcement Rights to Assignees of Lost, Destroyed, or Stolen Negotiable Instruments Under U.C.C. Article 3: a Proposal For Reform*, 50 U. KAN. L. REV. 111 (2001).

Exemption for Nonperformance: UCC, CISG, UNIDROIT Principles --A Comparative Assessment, 72 TULANE L. REV. 2015 (1998).

**Cited in:** Dionysios P. Flambouras, *The Doctrines of Impossibility of Performance and Clausula Rebus Sic Stantibus in the 1980 Convention on Contracts for the International Sale of Goods and the Principles of European Contract Law - a Comparative Analysis*, 13 Pace Int'l L. Rev. 261 (2001);

**Cited in:** Mark A. Baker, *The Sky Is Falling (Or Is It?): International Contracts and the Y2k Problem*, 32 VAND. J. TRANSNAT'L L. 347 (1999);

**Cited in:** Michael Bradley, *The Purposes and Accountability of the Corporation in Contemporary Society*, 62 LAW & CONTEMP. PROBLEMS 9 (Summer 1999);

**Cited in:** Scott D. Slater, *Overcome by Hardship: The Inapplicability of The UNIDROIT Principles' Hardship Provisions to CISG*, 12 FLA. J. INT'L L. 231 (1998).

Arkansas' Revised Article 3: User Caution Advised!!, 16 U.A.L.R. L. J. (1994).

**Cited in:** Virginia Wilson, *The Law of Negotiable Instruments, Bank Deposits, and Collections in Tennessee: A Survey of Changes in the 1990 Revisions to UCC Articles 3 and 4*, 28 U. MEM. L. Rev. 117 (1997).

Impact of the Restatement of Suretyship on UCC Transactions, with Neil B. Cohen, Reporter--Restatement of Suretyship and Guaranty, printed in ALI-ABA Course of Study Materials, The Emerged and Emerging New Uniform Commercial Code (December 1994);

**Reprinted in:** ALI-ABA Resource Materials, Banking and Commercial Lending Law (Richard Nassberg ed., 1995).

Abrogation of the Surety's Right of Discharge on Release of the Principal Obligor Under Revised Article 3: A Creditor's Tools for Maximizing of Self-Interest, 44 OKLAHOMA LAW REVIEW (1992).

**Cited in** textual discussion by: E. Allan Farnsworth, *Negotiable Instruments* 475 (4th ed.

1993);

**Cited in:** Thomas A. Diamond, *Proposed Standards for Evaluating When the Covenant of Good Faith and Fair Dealing Has Been Violated*, 47 HASTINGS L.J. 585 (1996);

**Cited in:** Donald J. Rapson, *History and Background of the Restatement of Suretyship*, 34 WILLIAM & MARY L. REV. 989 (1993).

God Talk By Professors Within The Classrooms of Public Institutions of Higher Education: What is Constitutionally Permissible?, with Bryon R. Johnson & Otto Jennings Helweg, 25 AKRON L. REV. 289 (1991).

**Cited in:** *Mellen v. Bunting*, 181 F.Supp.2d 619 (W.D. Va. 2002).

*Secondary Authority*

**Cited in:** Deanna N. Pihos, *Assuming Maturity Matters: the Limited Reach of the Establishment Clause at Public Universities*, 90 Cornell L. Rev. 1349 (2005);

**Cited in:** Jeffrey F. Addicott, *Storm Clouds on the Horizon of Darwinism: Teaching the Anthropic Principle and Intelligent Design in the Public Schools*, 63 OHIO ST. L.J. 1507 (2002).