Proposals for a Uniform Personal Property Leasing Law: A Nontechnical Synopsis

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With increasing frequency, lawyers are suggesting the adoption of a uniform law for personal property leasing. The rationale cited is both the lack of uniformity in applicable law and widespread uncertainty on whether particular statutes or concepts of common law, originally developed in the context of transactions categorized as sales of personal property or financings secured by personal property, should be applied to transactions which are denominated as leases by their parties.

Many who have spoken and written on this topic have long experience and established credentials as legal theorists or as professionals or both.[1] This article is not intended to add to or to comment on the body of jurisprudential literature that has developed over some 15 years in this area,[2] but instead to summarize some of the discussions in a nontechnical form and to offer some observations from the view of a leasing practitioner.

THE APPLICABLE LAW

While the concept of leasing may be said to have ancient origins,[3] the industry, as a truly significant factor in capital formation, has only been in existence this last quarter century. The notions of sales and of chattel mortgages and other types of secured transaction have developed slowly, supported by a body of common and statutory law that developed in parallel to the development of the pecuniary concepts. In contrast, leasing appeared on the legal scene virtually full grown.

For want of a better classification, legal scholars apply the designation of

"bailment for hire" to this type of transaction, but the venerable theories of bailment are neither sufficient for, nor wholly applicable to, the issues raised by a modern leasing transaction. In the abstract, a lease is properly perceived as a bailment (the delivery of a thing to a party not its owner, for that party's use, in return for compensation pursuant to a contract).[4] In practicality, a lease can be seen not only as a bailment, but also as a sale of the leased equipment or as a financing secured by that equipment. The extent to which those various aspects dictate the true nature of a transaction denominated as a "lease" depends upon the structure of the transaction and on the circumstances in which it was entered into.

Because of its multiple characteristics, courts and litigants have struggled to make a host of commercial rules of law fit the leasing arrangement. The application is seldom predictable or uniform, and, what is more unfortunate, the consequences of the application of these commercial laws may be inconsistent with the relationship which the parties intended when they entered into the transaction. What follows is a description of the way in which various of those laws have been or could be applied to leasing transactions.

The Lessor as Creditor

One area of difficulty involves that group of legal concepts brought to bear as a result of the lessor's role as a financing party. If the transaction is viewed as a financing device, and the lessor's interest in the leased property is interpreted as a security interest, laws regarding the perfection and priority of security interests, availability of remedies, limitations on permissible interest rates, and the rights of the parties in the event of a bankruptcy, might be properly applied.

Perfection and Priority

The Uniform Commercial Code (UCC), adopted in much the same form in virtually every state[5] includes, in Article 9, provisions establishing the rights of secured lenders and governing their enforcement. A lessor deemed to be covered by the Code is required to make a public record of its interest in the leased property by filing under the provisions of Article 9 to protect its interest in the leased property from being subject to the interests of the lessee's creditors. A failure to file would place the lessor in the category of an unsecured creditor.[6]

The Code also establishes rules for priorities among parties that may have competing interests in the same collateral. Even though a proper filing under Article 9 may be in place, a lessor's interest may be subordinate to those of other parties who may have filed earlier than the lessor,[7] or to the interests of a buyer without knowledge of the lessor's interests,[8] or to liens in respect of federal or state tax liabilities,[9] or to liens attaching because of the nature of the property as a fixture,[10] or to workmen's or materialmen's liens.[11]

Remedies

Article 9, in Part 5, sets out the rights of a secured party in the event of a debtor default. These provisions have been applied to transactions where a lease was determined to be one "intended for security,"[12] and have also been applied to transactions where there was no determination of whether the lease was one intended for security, and so expressly within the coverage of Article 9, or a genuine lease.[13] It is the application of the provisions of this Article to transactions denominated leases which has caused the most comment and concern among lawyers, and has given impetus to proposals for a uniform statutory approach to personal property leasing.

The remedies available to a creditor under Article 9 include the right to repossess the collateral if it can be done without a breach of the peace, or to do so through judicial process;[14] if the debtor consents, the right to retain the collateral in full satisfaction of the debt;[15] and the right to dispose of the property—by sale, lease, or otherwise—so long as the disposition meets the two basic requirements of the Code: The debtor must receive reasonable notice of the creditor's intention to dispose of the asset, and second, the disposition must be "commercially reasonable."[16]

The creditor's rights are balanced by the rights of the debtor to redeem the property at any time before it has been disposed of or before an agreement is made as to disposition or as to retention, by paying to the debtor the amounts owing;[17] and to challenge a proposed disposition before it is made.[18]

If, after a proper disposition, there remains a deficiency owing by the debtor, the creditor may claim the amount of the deficiency. If there are excess proceeds from the disposition, these are credited to the debtor.[19]

The intent of the Code is to assure that the highest possible price will be obtained for the collateral that secures the debt.[20] While this is certainly the same intent of a lessor seeking to dispose of leased property defaulted upon by the lessee, in several respects the application of Article 9 can be at odds with the interests of a lessor in a true lease transaction.

The premise underlying the remedies prescribed by Article 9 is that the debtor has equity in the property, which cannot be bargained away.[21] Consequently, the debtor is entitled to the value of the property, offset only by the amount of the debt obligation. If Article 9 is applied literally to a lease transaction, then the entire disposition proceeds, including the proceeds that can be attributed to the residual value of the equipment after the lease term, are credited against the lessee's obligations under the lease,[22] and if there is any excess, it is paid to the lessee. The lessor is deprived not only of the

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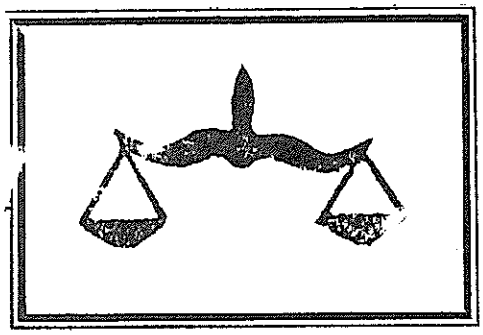
residual value that it may have assumed at the beginning of the lease, but if the property has increased in value beyond the parties original expectations, the lessee, not the lessor, receives the benefit of the windfall. The lessee is thus in a more advantageous position as a result of the default than it would have been had no default occurred and the parties had disposed of the property at the end of the term in accordance with the lease.

The premises underlying Article 9 are intended to protect not only the debtor's interests but also (or perhaps more so) the interests of other secured parties. Hence the Code permits the debtor to vary the provisions of the Article by contract only within a limited scope. While a leasing transaction may be intended as the functional equivalent of the extension of credit, and the remedies provided for by Article 9 may be suitable, leases are frequently entered into on the basis of noncredit considerations, and the remedies designed in light of such noncredit considerations may not be enforceable upon application of Article 9.

The standards imposed by the Article on a creditor in connection with a disposition are stringent, requiring that "every aspect including the method, manner, time, place, and terms" of a disposition be commercially reasonable.[23] The procedures that lessors presently have in place for disposition of leased assets defaulted upon may not meet the standards. The effect of a lessor's failure to comply with the required method of disposition is significant: Such a lessor may be disqualified from collecting any deficiency from the lessee.[24]

Usury

If the lease can be said to be a loan of money or a forbearance of a debt, then it is subject to the limitations against usurious rates of interest imposed in most states by statute or constitutional proscription.[25] A great volume of leasing is exempted from usury limitations either because of the nature of the lessee as a commercial entity, because there is a specific exemption provided for the lessor, or because of the time-price doctrine, which allows a seller of property to sell at one price for cash and at another for credit, without the application of usury laws. However, in cases where the laws are deemed to apply, the consequences for violation are severe, ranging from precluding the creditor from collecting the portion of interest held to be usurious, to penalizing the lender by requiring a reimbursement to the borrower of a multiple of the usurious interest.



Bankruptcy

Whether a transaction is characterized as a lease or as a secured lending can have a significant bearing on the rights of the lessor/creditor in the event of a bankruptcy by the lessee/debtor. In either case, the filing of a bankruptcy petition automatically stays the exercising of the creditor or lessor remedies against the debtor or in respect of the property at issue.[26] If the transaction is a lending, the debtor has the right to continue to use any of the collateral property, with or without the consent of the lender, so long as the lender is given "adequate protection" that the "value" of the property will be preserved.[27] The extent to which this protection is beneficial to the lender depends upon how the property is valued. By comparison, if the transaction is a lease, the debtor/lessee must assume the lease or reject it in its entirety, and if assumed, must give to the lessor "adequate assurances" that any prior default will be cured promptly, and that performance will take place in the future,[28] thus protecting the lessor's negotiated rental stream.

The Lessor as Seller

A further group of laws is sought to be applied to lessors as a consequence of their role as direct or indirect suppliers of equipment. These may create liabilities in respect of sales warranties, impose an obligation to collect taxes, and limit the enforcement of lessor remedies.

Warranties

There have developed over time in the common law, two warranties that are implied in connection with transactions involving goods. These warranties, that of merchantability and that of fitness for a particular purpose, have been codified in Article 2 of the Uniform Commercial Code.[29] The significance of the warranties lies in their strict imposition of liability: Warrantor liability does not depend on fault, so that there is liability even where there is no negligence.[30]

The warranties have been applied in lease cases both prior to and since the adoption of the Uniform Commercial Code[31] in instances where courts have found some nexus between the lessor and equipment that justified the imposition of liability, such as the lessor's special knowledge of, or extent of experience with, the equipment, and a showing of reliance by the lessee on the lessor's judgment.[32] The warranties can be excluded by contract provision meeting the requirements of the Code.[33]

Sales and Use Tax

When a lease is perceived as a sale of the leased property, the laws requiring collection of sales or compensating use taxes may be applicable. Some jurisdictions specifically include leases within the types of transactions on which taxes are imposed.[34] By contrast, a true financing is not itself subject to sales and use tax laws.

Remedies

Article 2 of the Uniform Commercial Code also describes the remedies available to a seller in the event that a buyer defaults in the payment of the purchase price of goods. Because of a lessor's role as a supplier of equipment, these sections of the Code have been made to apply to lessors. Thus the provision that liquidated damages should be only for "an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy," and the prohibition of "unreasonably large liquidated damages"[35] could limit the enforceability of acceleration of rentals clauses.

A further provision of Article 2 would, if applied to a lease, indirectly require a lessor to mitigate its damages in enforcing its remedies. Damages to a seller under Article 2 are limited to an amount equal to the difference between the market price of the goods involved in the default, and the unpaid contract price.[36] In order to mitigate, the lessor would be required to dispose of the leased asset by sale or re-lease, crediting the lessee with at least the value of the use of the property during the remaining lease term.[37] As is required in connection with the enforcement of remedies under Article 9, applying to secured parties, the disposition of the goods must be done in a "commercially reasonable" manner.[38]

It has been suggested that a "merchant lessor" (a lessor who is in the business of leasing equipment of the same type as that sought to be disposed of) is unfairly burdened by the requirement to lease or sell the equipment involved in a default to a customer who would otherwise have taken an item of equipment from the "merchant lessor's" inventory, and that there should be some exemption from the requirement to mitigate for such lessors.[39] However, this is exactly the burden that Article 2 places expressly upon sellers of goods, and it seems inconsistent to relieve a supplier from the requirement of the statute because of the method that it selects for placing the goods in the hands of a customer.[40]

The Lessor as Owner

The lessor's status as owner of the leased equipment may be the basis for liability for personal property taxes.[41] It also may make applicable the doctrine of strict liability in tort, under which a lessor/owner may be deemed liable in connection with claims or losses relating to the equipment, even without a showing of negligence on its part.[42].

THE PROPOSALS

None of the proposals for statutory treatment of personal property leasing appearing to date have offered comprehensive statements of what a new law should be. Rather, the proponents have sought to encourage discussion within their profession and in the industry as to the merits of various suggested approaches.

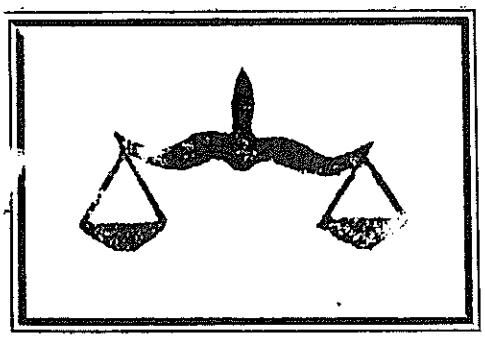
The proposals primarily have addressed remedies available to a lessor in the event of a default under the lease, and, to a lesser extent, the requirement of filing to create a public notice of lease transactions. Among legal scholars, there is much debate as to whether the statutory treatment should take the approach of an amendment to the definitions section of the Uniform Commercial Code and to Articles 2 and 9 of the Code, the addition of one or more Articles to the Code, the creation of an entirely new code, or some combination of the above. For purposes of this article, the substance of the proposals might best be understood without considering how changes in the law would be accomplished structurally. The proposals summarized below reflect the widely diverging approaches that are possible with respect to this issue.

A "True Lease" Statute

One approach[43] is to acknowledge a distinction between "true" leases and leases which fall in the category of security arrangements. Leases in the latter category are presently and would continue to be governed by Article 9.

"Nonsecurity" leases would be covered by new provisions of law, which would provide remedies designed to protect the lessor's benefit of its bargain. These remedies would include: All the remedies to which a secured party is entitled; and in addition, the right to terminate the lease, to recover any accrued and unpaid rentals, with interest, and to recover such compensation as will place the lessor in the position in which it would have been had the leasing agreement been performed in accordance with its terms.

In determining the amount of this compensation, the lessee would be credited only with the value of the use of the repossessed equipment for the remainder of the original lease term, and would receive no credit for the value of any residual; the lessor would



be required to make reasonable efforts to avoid loss.

This approach does not provide any simple formula for calculating the damages available on a breach, leaving a great deal to be determined in accordance with the circumstances surrounding the lease transaction. Thus, for example, whether the lessor was a "merchant" (and so would lose volume of sales by being required to sell or re-lease equipment which had been default upon) would be taken into account in determining what compensation would give the lessor the benefit of its bargain. Similarly, there is no absolute requirement that a lessor sell or re-lease the equipment in order to mitigate its damages. The lessor would be required to do so only if it were reasonable to do so in order to diminish the loss.

A "No Distinction" Statute

An alternate approach[44] is premised on the theory that there is no theoretical line between a lease constituting a security agreement and one more properly termed a "true" lease, and that, so long as the remedies which are designed are appropriate to the transaction, it does not matter that a distinction cannot be drawn between the two types of agreements.

The starting point of this proposal is that whenever a lessor grants a purchase option to a lessee, for whatever price, that lessor has given up to the lessee the opportunity for economic gain from the residual. Consequently, remedies should be drawn which preserve this equity position for the lessee. On lessee default, the lessor would be required to sell the property, and all of the proceeds, less the option price, would go to the credit of the lessee and be applied against its liability for prior and future rents. (Presumably an option to purchase at fair market value would bring the transaction within the ambit of these requirements, so that a lessor would be required to sell the equipment in order to preserve the right to damages, but the lessor would preserve the benefit of any unanticipated increase in the value of the equipment. Such a sale would establish factually what the market value of the equipment is (an amount that equals the lessee's option price).

If there is no purchase option, the lessor would be required to sell the equipment only if at the time of repossession the lease term remaining is more than half of the remaining useful life of the equipment. The lessee receives credit for a portion of the sale proceeds in the proportion of the present value of the use of the equipment for the remaining term to the present value of the use of the equipment beyond the term. If the lease term remaining is less than the remaining useful life, the lessor is obligated only to re-let the equipment.

These proposals are radically different. Each has appeal from the perspective of a lessor. The merit of the first proposal is that it acknowledges and preserves for the lessor its anticipated benefit from a true lease transaction. However, in order to do so, it requires that a distinction be made between a lease which constitutes a "security agreement" and one which does not. The difficulty in distinguishing between the two is, in large part, the cause of the current uncertainty and unpredictability that is sought to be avoided by a statutory treatment of leasing.

The drafters provide some standards intended to guide a court in classifying the transaction, such that a lease which preserves a "meaningful residual" for the lessor is considered to be a true lease. The existence of a fixed price option to buy or to re-lease, so long as it is for an amount "reasonably estimated by the parties at the time the agreement was made to be not less than the fair market value of the property at the time the option is exercised," does not of itself disqualify an agreement as a true lease; however, if: The agreement requires the lessee to pay an amount reasonably equivalent to the purchase price of "the goods" and provides the option to purchase the equipment at no consideration or for nominal consideration; or at the time the lease or an extension is entered into, the parties "could not reasonably have expected that the leased item would be returned by the lessee to the lessor at a time and in a condition that it would have a value not insubstantial in comparison with the value of the property at the time the lease was made," then the agreement is deemed to be one for security.

All of these standards are thoughtful references to the intention of the parties at the time a lease is entered into or extended. However, none of the standards is a touchstone. Because by necessity they encompass a wide spectrum of factual circumstances, they must be drafted in broad language. Certainly, the guidelines would be a valuable codification of critical factors that a court is to consider, such that some of the more anomalous and contradictory judicial conclusions would probably be avoided. It is difficult nonetheless to expect that there would be a significant reduction in litigation as courts struggle to determine whether the facts of a given situation fit the guidelines.

The "no distinction" statute is appealing because it avoids the difficulty of making a definitional distinction between a true lease and a security agreement. However, it rests on making key factual determinations: Whether a purchase option exists, and if not, what the life of the equipment is when a default occurs.

Even when the facts are clear as to the existence of a purchase option, it seems unlikely that lessors would be prepared to acknowledge that in granting a purchase option, at any price, they have forfeited their ownership interests in the leased equipment. The argument that the grant of an option indicates a lessor's willingness to part with the economic gain that might be obtained upon disposition of the equipment is correct as an abstraction, but this is a willingness to part with title to a given lessee, for a given price, and on the premise that the lessee perform fully its lease obligations. From a practical point of view, lessors often obtain the benefit of a residual higher than originally anticipated even in cases where an option has been granted to the lessee, because the lessee is not

interested in or is not able to exercise the option. The proposal would, as a matter of law, declare that a lessor who has granted an option has no entitlement to a gain from residual and—what is perhaps more troublesome—would deliver the benefit of the gain to a defaulting lessee.

Moreover, the same requirement that equipment be sold is imposed even absent a purchase option whenever the remaining term of a lease is equal to or greater than half of the remaining life of the leased equipment. The availability to the lessor of the economic benefit of ownership would thus depend on the timing of the lessee default. One can expect that in those situations where there is gain to be expected by the lessee from a forced sale, there would likely arise dispute as to what, in fact, constituted the "remaining useful life" of the equipment, in order to establish the applicability of the requirement.

There is a further practical difficulty with the requirement of a disposition by sale. Such a requirement imposes on the lessor the risk of recapture of tax benefits in circumstances in which it is least likely that the lessee could perform on its indemnity to the lessor covering the availability of those benefits.

Various factors contribute to the difficulty of determining, either as a matter of law or of fact, what is the nature of a given lease transaction. A key factor, discussed above, is the mixed jurisprudential heritage of this type of transaction. Yet there are other factors which ought to be recognized in connection with discussions respecting a uniform personal property leasing law.

Many of the cases in which courts sought to make the distinction between a lease and a security agreement share a common factual thread: The lessor sought to enforce remedies that were inconsistent or overreaching. One can infer that a court, in order to avail itself of the equitable principles underlying the security agreement laws, would seek to classify the lease as such an agreement. So long as lessors continue to write leases containing remedy provisions which could be seen as unconscionable, or as providing a benefit beyond that originally intended to be obtained from the transaction, the line between security agreements and true leases will continue to blur, as courts and legal scholars reach for whatever codified principle they can apply, either directly or by analogy, to balance the equities between the parties.

Another factor that makes it difficult to draw the line between the two types of transactions is the extraordinary flexibility and originality of the leasing industry in devising lease structures to accommodate changing economic and technological circumstances. Structures for variable rates or variable terms, leases for terms materially less than the useful life but longer than month-to-month, and leases permitting cancellations before the expiration of their terms could not easily be analyzed on the basis of the criteria suggested in these proposals.

One of the stated purposes of codifying the law of personal property leasing is that such treatment would promote uniformity in the treatment of lease transactions. Like the Uniform Commercial Code, a leasing statute (in whatever form it is ultimately enacted) could be adopted in substantially the same form in every state of the Union.[45] But this will not result in meaningful uniformity. It is unlikely that a state statute will govern the determination of substantive issues that are raised in a federal tax context, or in a bankruptcy, or in connection with questions of securities law. These areas of law are likely to continue to be enforced in the manner that their enforcers believe best meets the special purposes for which they were adopted. Yet the codification of leasing law may have an impact that proponents may not intend, by adding to the multiple criteria that already are applied in those areas of the law to determine whether a transaction is a lease, and so increasing uncertainty.

Discussions on the purpose underlying a uniform codification and on the actual proposals for a statute will likely continue for some time. The nonlegal sector of the leasing industry would do well to bring its perspective to these discussions.

Footnotes

1. The topic is currently being studied by the Subcommittee on Personal Property Leasing of the Committee on the Uniform Commercial Code, American Bar Association Section of Corporations, Banking and Business Law; by the National Conference of Commissioners on Uniform State Laws, Personal Property Leasing Committee, and, in a cross-national context, by the International Institute for the Unification of Private Law (UNIDROIT).

2. See, for example, Coogan, Hogan and Vagts, *Secured Transactions Under the Uniform Commercial Code* (Matthew Bender 1963, Supp. 1983), Chapters 4.1 & 4.2 by Peter F. Coogan and Chapter 4.3 by Mr. Coogan and Amelia H. Boss; Kripke, Book Review: *Equipment Leasing - Leveraged Leasing*, 37 The Business Lawyer 723 (1982). Leary, Jr., *The Procrustean Bed of Equipment Leasing*, 56 N.Y.U.L. Rev. 106 1 (1981); Money, *Personal Property Leasing: A Challenge*, 36 The Business Lawyer 160 J (1981); and earlier comments at 47 Notre Dame Lawyer, 993 (1972); and 13 UCLA Law Review 12 J (1965).

3. Leasing lore has it that the first recorded instances of leasing involved the purchase and leaseback by Egyptian Pharaohs of their subjects' land. A more appropriate historical precedent is the practice of railroads, beginning in the 19th Century, to lease their rolling stock.

4. J. Story, *Commentaries on the Law of Bailments* (rev.ed. 1832).

5. All the states of the Union, except Louisiana, and the District of Columbia and the Virgin Islands, have adopted the Code. Louisiana has adopted only certain sections. Uniform amendments to the Code are in place in 21 states.

6. UCC Section 9-302. The Code also provides for a "precautionary" filing under Section 9-408; such a filing is not an acknowledgement that the interest of the lessor is only that of a secured lender, but protects its interests in the event that it is determined that the lease is intended as a security and is not a true lease.

7. UCC Section 9-302.

8. UCC Section 9-301.

9. UCC Section 9-312(5)(a).

10. UCC Section 9-313.

11. See, for example, *Lease Service Corp. v. Carbonex, Inc.*, 512 F.Supp 253 (S.D.N.Y. 1981).

12. *Grossman v. Lippson*, 8 Cal. App.3d 554, 146 Cal. Rptr. 741 (1978).

13. *Puritan Leasing Co. v. August*, 16 Cal.3rd 451, 546 P.2d 679, 128 Cal.Rptr.175 (1976), relied on for the proposition that the remedies applicable in a secured transaction and in a true lease are the same in *W.W. Leasing Unlimited v. Torok Exploration, Mining & Construction Co.*, 575 F.2d 1259 (9th Cir. 1978). See DeKoven, *Leases of Equipment: Puritan Leasing Company v. August, on Dangerous Decision*, 12 U.S.F.L.R. 257 (1978).

14. UCC Section 9-503.

15. UCC Section 9-505(2). The consent of other secured parties may also be necessary.

16. UCC Section 9-504(3).

17. UCC Section 9-506. Mr. Coogan comments that even where there exists a valid acceleration clause triggered by a debtor's default in paying a given installment, it is conceivable that a court might allow a debtor to redeem by paying only the installments that may be unpaid, without requiring payment of the full accelerated amount. Cooper, *et. al.*, *supra*, at Section 8.06.

18. UCC Section 9-507(1). The right to challenge also is given to other parties secured by the property being disposed.

19. UCC Section 9-504.

20. UCC Section 9-504, comment 1.

21. See G. Gilmore, *Security Interests in Personal Property*, section 44.2 (1965).

22. This was the outcome of *Puritan*, *supra* n. 13.

23. UCC Section 9-504(3).

24. There are two lines of thought as to the consequences: One would deny the right to any deficiency, and the other would deny the right only to the amount of the difference between what was actually collected at the noncomplying disposition and what would have been obtained at a disposition in line with the requirements of the Code. See cases cited Messrs. Coogan and Hogan in Coogan, et. al., *supra*, at Section 8.06 (2).

25. See, for example, *National Car Rental* v. *Hendrix*, 565 F.2nd 255 (2d Cir. 1977).

26. Section 362 of the Bankruptcy Code.

27. Section 363 of the Bankruptcy Code.

28. Section 365 of the Bankruptcy Code.

29. UCC Section 2-315 and Section 2-314.

30. See Farnsworth, *Implied Warranties of Quality in Non-Sales Cases*, 653 Columbia Law Review, discussion at 657-660.

31. Article 2 has been applied directly to leases and has been applied by way of analogy. Mooney, *supra*, at 1619.

32. Carlin, Product Liability for the Equipment Lessor? Merchant-Lessor versus Finance-Lessor, Chapter 8, *Equipment Leasing-Leveraged Leasing*, Practicing Law Institute (1980).

33. UCC Section 2-316 and 2-317.

34. As does, for example, California.

35. UCC Section 2-718(1).

36. UCC Section 2-708.

37. UCC Section 2-706.

38. *Id.*

39. See *Honeywell, Inc. v. Lithonia Lighting, Inc.*, 317 Supp. 406 (N.D. Ga. 1970), discussed at Hawkland, *The Impact of the Uniform Commercial Code on Equipment Leasing*, 1972 Ill. L.F. 446, 458.

40. Kripke, *Getting Down to Earth on Equipment Leasing Transactions*, 12 Practicing Lawyer 9, 36 (1966).

41. See, for example, *RCA Corporation v. State Tax Commissioner* 513 S.W.2d 313 (Mo. 1974).

42. See Fraser, *Application of Strict Tort Liability to the Leasing Industry: A Closer Look*, 34 Business Lawyer 605 (1979).

43. Proposed by Mr. Coogan and Professor Boss at a symposium "Personal Property Leasing: Prospects and Proposals for Uniform Statute" sponsored in February, 1983, by the American Law Institute and the American Bar Association.

44. Proposed by Mr. Kripke at the same symposium, n.43.

45. There is, of course, no guarantee of uniformity, as the statute is adopted by independent process in each state. Nor will adoption be speedy. For example, the amendments to the Uniform Commercial Code promulgated in 1972 are to date in effect only in some 22 states.