

PREFACE

This is the preface for the 2025 set of Pocket Parts for Volumes 25 and 25A of the Massachusetts Practice Series dealing with the Uniform Commercial Code (M.G.L.c.106).

Over the past two years' annual Prefaces, I have briefly reviewed the anticipated changes being wrought by the proposed new Article 12 regarding Controllable Electronic Records. Once again, it was my hope that I would be reporting here on progress in Massachusetts in the adoption (or rejection) of the proposed Article 12; however, no such information is available as of the date of this Preface. While the American Law Institute (ALI) and the Uniform Law Commission (ULC) have been met and provided drafts models from the Joint Committee on the Uniform Commercial Code and Emerging Technologies, approved by its drafting committees last summer, the new article to the Uniform Commercial Code and the 2022 Amendments for enactment in the states have been introduced in the legislatures of many states and the District of Columbia, and they have been enacted in more than a dozen of those jurisdictions. While legislation in Massachusetts has created a commission to study this new Article 12, it has not yet been adopted here.

In a continuation of previous practice, these Pocket Parts contain not only material from the courts of the Commonwealth of Massachusetts and the First Circuit Court of Appeals, but also selected federal decisions from around the country relating to the interpretation of various provisions of the Uniform Commercial Code. In the opinion of this author, and as is apparent from the courts themselves, such decisions of courts from across the United States are increasingly relevant in this area, given the emphasis and goal of uniformity and the increasing frequency of multi-state and cross-border transactions in which the Massachusetts practitioner is expected to function. As you may be aware, Article II of the Massachusetts Guide to Evidence (Mass. R. Evid.) Section 202 "Judicial Notice of Law" provides in subsection "(a)(2) Mandatory" that "A Court shall take judicial notice of the contents of... the laws of foreign jurisdictions that are brought to the court's attention." As such, the cases presented herein are "fair game" for the commercial litigator to bring to a Court's attention.

Particular care should be taken in the use of forms originating in jurisdictions other than the Commonwealth of Massachusetts, in that said forms may be founded on statutory, administrative and common law concepts peculiar to each such

jurisdiction. This has been particularly relevant in light of the significant revisions that have been adopted over the years in the substantive Articles of the Uniform Commercial Code.

Cases reported in F.Supp. (as are all of those in the following 2024 updates) may be viewed as more persuasive than those that are unpublished. See also G.L. c.233, Section 70. In addition, the review of relevant case law in other jurisdictions in the United States reveals a growing number of decisions which contain relevant discussion and application of Uniform Commercial Code concepts in cases which are not fully reported or designated as having ‘unpublished’ status. Although the author suggests that the articulation therein contained is helpful in determining the present status of UCC judicial interpretations, care should be taken to be sensitive to any limitation of the use of such cases as authority if not fully published.

Finally, to borrow the language elsewhere in the publisher’s notes, neither the publisher nor the author is providing legal advice by providing these materials; the information contained herein is not a substitute for the direct advice of an attorney; and if you require individual legal or other expert advice, you should seek the direct services of a competent attorney or other professional.

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