

PREFACE

This is the preface for the 2026 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).

To first address the “elephant in the room”: no, Massachusetts has not (yet) adopted the 2022 UCC Amendments which include the new Article 12. Over the past four years’ annual Prefaces, I have briefly reviewed the anticipated changes being wrought by the proposed new Article 12 regarding Controllable Electronic Records (as well as other updates from the 2022 UCC Amendments). 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; but we are still waiting. While the American Law Institute (ALI) and the Uniform Law Commission (ULC) have met and provided drafts models from the Joint Committee on the Uniform Commercial Code and Emerging Technologies, approved by its drafting committees, 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 33 of those jurisdictions. If you are as much of a law “geek” as is your faithful author, then you are as impatient as I; however, as has been pointed out elsewhere, the comprehensive nature of the updates (which affect not just Article 12 but most of the other Articles as well) makes careful consideration by the legislature both understandable and desirable. The present iteration, House Bill H.1282, titled “An Act Updating the Massachusetts Uniform Commercial Code”, has the expressed goal to modernize the state’s commercial laws to address the digital economy, specifically targeting assets like cryptocurrency and NFTs. The bill is currently under consideration by the 194th General Court, the traditional nomenclature for our legislature. Its intended effective date if passed was to have been January 1, 2026, but such discrepancies are common and easily repaired if / when passed. Previous similar bills were H.1107 and H.1112. All of the bills were favorably reported out from committee consideration. These potential new elements could include but are not limited to Controllable Electronic Records, defined as digital assets like crypto and NFTs (which would provide clear legal rules for their transfer and ownership); Perfection by Control, establishing a mechanism for creditors to secure digital assets as collateral through “control” as intended to be more reliable for lenders than traditional filing methods; and the Take-Free Rule which introduces rules allowing “qualifying purchas-

ers” who obtain control of a digital asset in good faith and for value to take that asset free of previous property claims. Many have pointed out that the transition period (during which other states have adopted the 2022 UCC Amendments but Massachusetts has not yet done so) creates a variety of choice of law issues. Massachusetts has in the past taken a similar “wait and see” attitude about UCC update adoptions. Yet the Massachusetts practitioner must still advise their client on the issues that are ultimately the purview of the proposed Article 12 (and other) adoptions. For these reasons, the Forms portion of these Volumes is focused in this annual Massachusetts Practice update to the collection of so-called Article 12 forms that have relevance to other Articles while we are in transition. These may be found, hopefully temporarily, at Volume 27, Article 9, Part 1 Security Agreements – General Forms, Section R. Miscellaneous, following my Author’s Comment.

Now for another pachyderm lumbering around the room these days: Stare Decisis. You and I learned about it in law school, the Latin phrase meaning “to stand by things decided”. It has been a fundamental doctrine that obligated courts to follow historical cases when making a ruling. It told us all – lawyers, judges and average citizens – that we could comfortably rely for the most part upon legal principles established by a Court’s decision in a previous case; not just to bind future cases that have similar facts or legal issues, but in our daily lives as well. Why did we do things that way? Primarily so that law was applied consistently, predictably, and fairly over time. However, the U.S. Supreme Court has, over roughly the past decade, issued several landmark rulings that have significantly altered or discarded long-standing precedents, leading many legal scholars to say that Stare Decisis is being radically weakened. That Court itself has not expressly stated that Stare Decisis is dead; rather, that certain previous decisions were incorrect and needed to be corrected. There is, pun absolutely intended, a strong precedent for doing so; it is in fact the reason that you and I – lawyers, law professors and the like – always checked to see whether a particular case was still “good law” before going into Court, or had been overruled, reversed, or even just questioned by later cases. (You know the term for that checking process, a word that happens to be the exclusive purview of a competing legal publisher). While Stare Decisis is not dead, it is certainly for now in flux. While that situation continues you, the reader, are I think well advised to a) continue to use precedent in your arguments to Courts and advice to clients; but b) be prepared for available alternative arguments. For this and other reasons, these Volumes cast a widened net amongst the US Federal District Courts, including those beyond only the US Federal District Court for the District of Massachusetts. Even

PREFACE

Massachusetts state courts themselves have often used the term “highly persuasive” (though not binding) when describing out-of-state decisions, particularly those from other federal courts. This is especially relevant when dealing with the Uniform Commercial Code as adopted in Massachusetts because, even though most state adoptions of the UCC differ slightly here and there, their basis on a uniform model offers the opportunity for a greater quantity of decisions from which to consider, as well as the value in ensuring nationwide consistency. But I wouldn’t be a lawyer (retired from practice but not from teaching) if I did not remind the reader to take care that a decision from another state federal court might be “highly persuasive” but still *not* binding.

Now for another pachyderm lumbering around the room these days: *Stare Decisis*. You and I learned about it in law school, the Latin phrase meaning “to stand by things decided”. It has been a fundamental doctrine that obligated courts to follow historical cases when making a ruling. It told us all – lawyers, judges and average citizens – that we could comfortably rely for the most part upon legal principles established by a Court’s decision in a previous case; not just to bind future cases that have similar facts or legal issues, but in our daily lives as well. Why did we do things that way? Primarily so that law was applied consistently, predictably, and fairly over time. However, the U.S. Supreme Court has, over roughly the past decade, issued several landmark rulings that have significantly altered or discarded long-standing precedents, leading many legal scholars to say that *Stare Decisis* is being radically weakened. That Court itself has not expressly stated that *Stare Decisis* is dead; rather, that certain previous decisions were incorrect and needed to be corrected. There is, pun absolutely intended, a strong precedent for doing so; it is in fact the reason that you and I – lawyers, law professors and the like – always checked to see whether a particular case was still “good law” before going into Court, or had been overruled, reversed, or even just questioned by later cases. (You know the term for that checking process, a word that happens to be the exclusive purview of a competing legal publisher). While *Stare Decisis* is not dead, it is certainly for now in flux. While that situation continues you, the reader, are I think well advised to a) continue to use precedent in your arguments to Courts and advice to clients; but b) be prepared for available alternative arguments. For this and other reasons, these Volumes cast a widened net amongst the US Federal District Courts, including those beyond only the US Federal District Court for the District of Massachusetts. Even Massachusetts state courts themselves have often used the term “highly persuasive” (though not binding) when describing out-of-state decisions, particularly those from other federal courts. This is especially relevant when dealing with the Uniform Commercial

Code as adopted in Massachusetts because, even though most state adoptions of the UCC differ slightly here and there, their basis on a uniform model offers the opportunity for a greater quantity of decisions from which to consider, as well as the value in ensuring nationwide consistency. But I wouldn't be a lawyer (retired from practice but not from teaching) if I did not remind the reader to take care that a decision from another state federal court might be "highly persuasive" but still *not* binding.

In a continuation of previous practice, these "Pocket Parts" (perhaps an anachronistic alliterative term in this primarily digital era) 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, my predecessor authors, most other similarly-situated authors I've encountered 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. 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

PREFACE

advice by providing these materials; the information contained herein is not a substitute for the direct advice of an attorney and the reader's reasonable due diligence; and if you require individual legal or other expert advice, you should most certainly seek the direct services of a competent attorney or other professional.

FREDERICK (RICK) TRILLING
JD, MBA and MS Cybersecurity
PROFESSOR OF BUSINESS LAW
WENTWORTH INSTITUTE OF TECHNOLOGY
(Retired Member of the Massachusetts Bar)

April 20, 2026