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Rodney Shkolnick

Creighton University School of Law

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THE NEBRASKA UNIFORM COMMERCIAL CODE:
ARTICLE 6—BULK TRANSFERS

Rodney Shkolnick*

Bulk sales legislation arose out of an attempt to protect the creditors of merchants who would sell their stock in trade and either squander or secrete the proceeds.

Under the normal rules relating to fraudulent conveyances the creditor could pursue the property transfixed if he could show that the transfer was made with the intent to hinder, delay or defraud creditors, and that the transferee had knowledge of the transferor's design. However, since a creditor would not be entitled to relief if the transferee was an innocent purchaser for an adequate consideration, and it generally would be difficult to prove that the transferee was aware of any fraudulent intent which the transferor might have had, the protection afforded by the ordinary doctrines concerning fraudulent conveyances or transfers was inadequate. Under bulk sales legislation the creditor is normally allowed to treat certain transfers in bulk as void if the parties do not comply with the statutory requirements regardless of their intent or the fairness of the transaction. The statutory requirements, though varying from jurisdiction to jurisdiction, ordinarily include the preparation of an inventory of the assets to be transferred, the preparation of a list of creditors and a requirement that notice of the intended transfer be sent to the creditors of the transferor prior to the completion of the transaction.

Article 6 of the Nebraska version of the Uniform Commercial Code, which will become operative at midnight on September 1, 1965,¹ replaces the present Nebraska bulk sales law,² and will govern the area of bulk transfers.

*B.A., J.D., State University of Iowa; Member Nebraska and Iowa Bar; Assistant Professor of Law, Creighton University.

¹ UNIFORM COMMERCIAL CODE, § 10-101. All references to the Uniform Commercial Code, hereinafter cited U.C.C., will be to that version adopted in Nebraska by LB 49, 73d Neb. Leg. Sess. (1963).

² NEB. REV. STAT. §§ 36-501, 36-502 (Reissue 1960). These sections are repealed by U.C.C. § 10-102.

BULK TRANSFERS SUBJECT TO ARTICLE 6

Article 6 of the Commercial Code does not purport to be applicable to all transfers in bulk. Section 6-102(1) of the Code defines those bulk transfers which are subject to Article 6 in the following terms:

A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9-109)³ of an enterprise subject to this Article.

In addition to those transfers which are excluded by this definition, Section 6-103 of the Commercial Code contains a list of eight types of transfers which are specifically stated to be not subject to Article 6.⁴ A transfer of "equipment"⁵ will never be a bulk transfer subject to Article 6 unless a substantial part of the equipment of an enterprise subject to Article 6 is transferred in connection with a bulk transfer of inventory.⁶ Under the definition set forth in Section 6-102(1), then, a transfer in bulk must be (1) a transfer of a major part of the materials, supplies, merchandise or other inventory; (2) of an enterprise subject to Article 6; and (3) the transfer must be a transfer not in the ordinary course of the transferor's business.

ENTERPRISES SUBJECT TO ARTICLE 6.

While the present Nebraska Statute governing bulk sales does not purport to exempt any particular type of business from the necessity of complying with the statutory requirements, Section 6-102(1) specifically requires that the transfer be from "an enterprise subject to this Article." Section 6-102(3) defines these enterprises in the following terms: "The enterprises subject to this

³ U.C.C. § 9-109(4) states that "goods are . . . 'inventory' if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment."

⁴ It is to be noted, however, that several of these excepted transfers appear to be excepted from the normal requirements of Article 6 only if certain other specified requirements are met.

⁵ U.C.C. § 9-109(2) states that "goods are . . . 'equipment' if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods . . ."

⁶ U.C.C. § 6-102(2).

Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.”

It is clear from this provision that those businesses which deal primarily in services are not enterprises subject to Article 6, and that a transfer of the inventory or equipment of such a business could never be a bulk transfer subject to Article 6. Thus, as noted in Comment 2 to the official text of Section 6-102, businesses such as barber shops, cleaning establishments, and medical and legal businesses are excluded.⁷

To what extent manufacturers are included in those enterprises subject to Article 6 is not definitely answered by Subsection 6-102(3). If the principal business of the manufacturer is the sale of merchandise from stock, it is clear that it is an included enterprise. It has been suggested that “most manufacturers are not principally engaged in the sale of merchandise from stock” and that only manufacturers such as a small bakery which sells at retail should be held subject to Article 6.⁸

“Major Part;” Not in the Ordinary Course of the Transferor’s Business.”

Assuming that the enterprise is one which falls within Section 6-102(3), the transfer in bulk will not be a bulk transfer unless the other definitional requirements of Section 6-102 are met. The transfer must be of a *major* part of the materials, supplies, merchandise or other inventory, and the transfer must not be in the ordinary course of the transferor’s business. The Commercial Code does not contain a definition of the words “major part” or “major”. It would appear that the requirement that a “major part” be transferred would mean that unless over 50% of the inventory were involved, the transfer would not be a bulk transfer within Article 6 of the Code. This writer’s research has disclosed only one case in which a court was concerned with the question of the meaning of the term major part in connection with a bulk sale.

In *Zenith Radio Distrib. Corp. v. Mateer* the statute involved applied only to the transfer “of the major part or the whole of a stock of merchandise . . .”⁹ In holding the statute inapplicable where

⁷ Comment 2 to the Official Text to U.C.C. § 6-102 indicates that it was the intent of the drafters of Article 6 to exclude those businesses in which “unsecured credit is not commonly extended on the faith of a stock of merchandise.”

⁸ See HAWKLAND, *SALES & BULK SALES* 167 (1958).

⁹ 311 Ill. App. 263, 265, 35 N.E.2d 815, 815 (1941).

50% of the business had been transferred the court noted that the bulk sales act was in derogation of the Common Law and stated:¹⁰

The word *major* has a clear and definite meaning and the Court in interpreting this Statute must give this word the ordinary meaning, which is defined to be "greater or larger." Giving the word *major*, its accepted meaning in the present case, the sale of 50% of . . . [the] business . . . was not the major part of the business.

As has been noted, Subsection 6-102 (2) provides that a transfer of a "substantial part" of the equipment of a subject enterprise is a bulk transfer if made in connection with a bulk transfer of inventory.¹¹ As a "substantial part" could clearly be some part less than one-half, it would appear that the drafters of Article 6 intended "a major part" to mean over 50%.

Article 6, like the present Nebraska bulk sales act, does not provide a rule or definition for determining when the transfer is "not in the ordinary course of the transferor's business." Due to the requirement that the transfer be of a major part of the transferor's inventory it is clear that normally the transfer in question will involve a rather sizeable amount of goods. If the transferor can show that he ordinarily makes such sales to the class of customer involved, the transfer would presumably be in the ordinary course of his business. Rather obviously the sale of a major part or all of the stock to a competitor or a new business would not be in the ordinary course of business. Two cases which reached conflicting results may serve to illustrate some of the problems involved in determining whether a transfer is in the ordinary course of the transferor's business. In *Jubas v. Sampsell*¹² the transferor, a retail shoe enterprise, sold 1240 pairs of broken sizes and out of style shoes to the defendant after all efforts to sell the shoes at retail had failed. There was no compliance with California's bulk sales law which applied if the sale was "otherwise than in the ordinary course of trade and in the regular and usual practice and method of business of the vendor." The court held that the sale was fraudulent because of non-compliance with the Bulk Sales Act stating:¹³

The 'regular and usual practice and method of business of the vendor' cannot be measured by a prevalent custom of merchants which the vendor followed. The vendors herein were retail shoe

¹⁰ 311 Ill. App. 263, 266-67, 35 N.E.2d 815, 816.

¹¹ See text accompanying note 6, *supra*.

¹² 185 F.2d 333 (9th cir. 1950).

¹³ *Id.* at 334.

merchants whose regular and usual practice and method of business was selling shoes to those who came into the store to buy from the stock in trade for wear.

The plain meaning of the statute is that when a storekeeper disposes of a substantial part of his stock in bulk sales is not the usual and ordinary way in which he conducts his business from day to day, the sale falls within the statute.

In *Sternberg v. Rubenstein*,¹⁴ the Court of Appeals of New York was faced with a similar problem. A retail shoe merchant sold some 1300 pairs of off season shoes to a dealer in leftover footwear without complying with the New York Bulk Sales Act which applied to a sale which was "otherwise than in the ordinary course of trade and in the regular prosecution of said business."

The Court found that such sales were a common and, indeed, necessary part of the retail shoe business and noted that creditors of the transferor would not be served by making the retailer sell such shoes at greatly reduced prices to the retail public. In holding the transfer valid the Court stated:¹⁵

Such recurring sales, vital as they may be to the operation of the smaller independent retailer, must be regarded, in the words of the statute, as sales made 'in the ordinary course of trade and in the regular prosecution of said business. . . .'

. . . We cannot ignore the usages and necessities of modern retailing by holding that only those sales made to customers off the street are in the ordinary course of trade or the regular prosecution of business.

While some distinction can be made on the basis of the particular statutes involved, these cases evidence different approaches to the question of what transfers would be within the ordinary course of transferor's business which are not precluded by Article 6 of the Commercial Code.

EXCEPTED TRANSFERS.

Section 6-103 of the Commercial Code specifically provides that certain transfers are not bulk transfers subject to Article 6. These excepted transfers are: (1) transfers made to give security for the performance of an obligation;¹⁶ (2) general assignments for the benefit of all the transferor's creditors and subsequent transfers by the assignee;¹⁷ (3) transfers in settlement or realization of a

¹⁴ 305 N.Y. 235, 112 N.E.2d 210 (1953).

¹⁵ 305 N.Y. 235, 240, 242, 112 N.E.2d 210, 213.

¹⁶ U.C.C. § 6-103(1).

¹⁷ U.C.C. § 6-103(3).

lien or security interest;¹⁸ (4) sales by executors, administrators, receivers, trustees in bankruptcy or public officers under judicial process;¹⁹ (5) sales made in course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the corporate creditors pursuant to the order of the court or administrative agency;²⁰ (6) transfers to a person maintaining a known place of business in Nebraska who becomes bound to pay the debts of the transferor in full, and who is solvent after becoming so bound;²¹ (7) a transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and the transferor receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;²² and (8) transfers of exempt property.²³

Present Nebraska law already excludes the case of chattel mortgage on a stock of merchandise²⁴ and sales by personal representatives and public officers under judicial process²⁵ from the operation of the bulk sales statute. In connection with excepted transfers (6) and (7), *supra*, which involve transfers to a person maintaining a known place of business in Nebraska or to a new successor business, it is to be noted that the transferee must assume the debts of the transferor, and give public notice of the transaction. Since there is no provision in Article 6, as adopted in Nebraska, which specifically provides for the form of this notice, presumably the general provision on notice, Section 1-201 (25) will control.²⁶

SCHEDULING AND NOTICE REQUIREMENTS.

If it is determined that the contemplated transfer is a bulk transfer subject to Article 6 the parties to the transfer must comply with certain scheduling and notice requirements in order for the

¹⁸ U.C.C. § 6-103(3).

¹⁹ U.C.C. § 6-103(4).

²⁰ U.C.C. § 6-103(5).

²¹ U.C.C. § 6-103(6).

²² U.C.C. § 6-103(7).

²³ U.C.C. § 6-103(8).

²⁴ *Appel Mercantile Co. v. Kirkland*, 105 Neb. 494, 181 N.W. 151 (1920).

²⁵ NEB. REV. STAT. § 36-502 (Reissue 1960).

²⁶ The 1958 Official Text of the Uniform Commercial Code was the text which was substantially adopted in Nebraska. The 1962 Official Text has added a paragraph to § 6-103 which sets forth the manner of giving the public notice required by §§ 6-103(6)-(7).

transfer to be effective against creditors of the transferor. The Nebraska version of the Uniform Commercial Code requires the preparation and preservation of a list of the transferee's creditors and a schedule of the property involved. Notice must be given to the transferee's creditors at least ten days prior to the time the transferee pays for or takes possession of the goods.

THE SCHEDULE OF PROPERTY AND LIST OF CREDITORS.

Section 6-104(1) (b) requires the parties to "prepare a schedule of the property transferred sufficient to identify it."²⁷ The transferee must also require the transferor to furnish a list of his existing creditors.²⁸ This list must contain the names and business addresses of all of the transferor's creditors and the names of those who assert claims against the transferor even though the claims are disputed.²⁹ The list of creditors is to indicate the amounts owed, when known, and the list is to be signed and sworn to or affirmed by the transferor or his agent.³⁰ The transferee is protected against unknown errors and omission by the transferee in the list of creditors by Section 6-104(3) of the Commercial Code which provides:

Responsibility for the completeness of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have knowledge.³¹

The schedule of property and list of creditors must be either preserved by the transferee for a period of six months following

²⁷ There is no requirement that the cost price of the items to be transferred be included in the schedule of property as there is under the present Nebraska act which requires a "full detailed inventory showing the quantity, and so far as possible with the exercise of reasonable diligence, the cost price to the seller of each article to be included in the sale, trade, or other disposition." NEB. REV. STAT. § 36-501 (Reissue 1960).

²⁸ U.C.C. § 6-104(1) (a).

²⁹ U.C.C. § 6-104(2).

³⁰ *Ibid.*

³¹ The U.C.C. expressly defines and distinguishes "knowledge" from "notice" in § 1-201(25) by providing: "A person has 'notice' of a fact when

- (a) he has actual knowledge of it; or
- (b) he has received a notice or notification of it; or
- (c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it. 'Discover' or 'learn' or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act."

the transfer and made available for inspection and copying by creditors of the transferor, or the transferee must file the list and schedule "in the office in which a security agreement executed by the transferor is required to be filed as provided in Section 9-401."³²

THE NOTICE TO CREDITORS—WHAT CREDITORS PROTECTED.

In addition to the preparation and preservation of the schedule of property and list of creditors, Section 6-105 of the Commercial Code provides that the transfer will be ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer. Then notice must be delivered personally or sent by registered mail to all the persons shown on the list of creditors and to all other persons shown on the list of creditors and to all other persons who the transferee knows hold or assert claims against the transferor.³³

At this point, the question of who are creditors of the transferor within the purview of Article 6 of the Commercial Code must be considered. Section 6-109 of the Code provides:

The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6-105 and 6-107) are not entitled to notice.

It is clear from this provision that the Commercial Code does not require that the creditor's claims arise out of or have any connection with property to be transferred³⁴ and those asserting

³² U.C.C. § 6-104(1)(c).

³³ U.C.C. § 6-107(3).

³⁴ The few Nebraska decisions which have considered the question of the parties entitled to the protection of the bulk sales act have not interpreted the term "creditors" narrowly. In *Domicus v. Kelly*, 120 Neb. 588, 234 N.W. 416 (1931) the transferors owned and operated a retail drug business which they sold to the defendants. At the time of the transfer the transferors were indebted to the plaintiff for rental accruing under a lease. The list of creditors furnished by the transferors did not contain plaintiff's name and purported to be "a complete, full and itemized statement and description of all the creditors, the amounts due said creditors, having bills due and obligations legally due and unpaid under the bulk sales law of the state of Nebraska, against the drug store owned and operated by . . . [transferors]." In holding that the transferees were liable as garnishees to the plaintiff the Supreme Court of Nebraska stated, 120 Neb. at 591-92, 234 N.W. at 418-19:

"The terms of this instrument do not purport to enumerate, in fact, all creditors of the seller, but only to include such of those whose 'bills and obligations' in view of the source of their creation were such

disputed claims against the transferor are expressly required to be included on the list of creditors.³⁵ It has been suggested that the language of Section 6-109 is broad enough to include even unliquidated tort claimants of the transferor³⁶ and Comment 1 to the official text of Section 6-109 states: "The claims referred to of course include unliquidated claims." Among the creditors who should not be overlooked are the ever present tax collectors.³⁷

The requirements as to the contents of the notice to creditors are set forth in Section 6-107 of the Commercial Code. In reality, alternative forms of notice are provided for depending upon whether or not the debts of the transferor are to be paid in full as they fall due as a result of the transaction. If the debts are to be so paid, Section 6-107(1) provides the notice shall state: (1) that a bulk transfer is about to be made;³⁸ (2) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee;³⁹ and (3) whether the debts of the transferor are to be paid in full as they fall due as a result of the transaction and if so the address to which creditors should send their bills.⁴⁰ Section 6-107(2) provides for the form

as were then enforceable against the drug stock involved, and each of which was then due and unpaid." Creditors having unmatured bills and obligations were therefore expressly excluded The statute involved plainly contemplates, . . . that the seller shall furnish to the purchaser and the purchaser shall require and exact a list of all the seller's creditors, whether the obligations involved are matured or unmatured and irrespective of the source thereof"

In *Cech v. Costello*, 117 Neb. 224, 220 N.W. 236 (1928) the transfer was of the stock of merchandise of a grocery and meat business. No attempt was made to comply with the bulk sales law. The Nebraska Supreme Court, without discussion, held the transferee liable as garnishee to a creditor whose claim had no connection with the stock of merchandise transferred but arose as a result of labor performed in connection with a farm which was also owned by the transferor.

³⁵ U.C.C. § 6-104(2).

³⁶ See Billig, *Article 6—Order out of Chaos; A Bulk Transfer Article Emerges*, 1952 WIS. L. REV. 312 at 329, 330. For a rather complete collection of cases dealing with the question of who are creditors within the purview of present bulk sales acts see Annot., 85 A.L.R.2d 1211.

³⁷ *E.g.*, *United States v. Goldblatt Bros.*, 128 F.2d 576 (7th Cir. 1942), *cert. denied*, 317 U.S. 662 (1942); *Fisher v. Rio Tire Co.*, 65 S.W.2d 751 (Comm'n Tex. App. 1933).

³⁸ U.C.C. § 6-107(1)(a).

³⁹ U.C.C. § 6-107(1)(b).

⁴⁰ U.C.C. § 6-107(1)(c).

of the notice to creditors if the debts of the transferee are not to be paid in full or the transferee is in doubt on that point. In such a case the notice should so state and, in addition to stating the information required in (1) and (2) *supra*, the notice must also give: (1) the location and general description of the property to be transferred and the estimated total of the transferor's debts;⁴¹ (2) the address where the schedule of property and list of creditors may be inspected;⁴² (3) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;⁴³ and (4) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.⁴⁴

EFFECT OF NONCOMPLIANCE WITH ARTICLE 6—

CREDITORS REMEDIES

Although Article 6 provides that a failure to comply with its provisions render a bulk transfer ineffective against the creditor,⁴⁵ no particular course of action or remedy which the creditor might pursue is set forth in Article 6. Apparently any procedure now available to creditors under the present law relating to bulk sales will still be available under the Commercial Code.⁴⁶ Since the transfer is ineffective the creditor may proceed to levy upon the property in the hands of the transferee as property of the transferor-debtor and this procedure has been recognized by the Supreme Court of Nebraska.⁴⁷ The creditor may also proceed against the

⁴¹ U.C.C. § 6-107(2) (a).

⁴² U.C.C. § 6-107(2) (b).

⁴³ U.C.C. § 6-107(2) (c).

⁴⁴ U.C.C. § 6-107(2) (d).

⁴⁵ U.C.C. §§ 6-104, 6-105.

⁴⁶ See Comment 2 to the Official Text of § 6-104 which provides in part: ". . . the sanction for non-compliance with the present section is that the transfer is ineffective against creditors of the transferor Any such creditor or creditors may therefore disregard the transfer and levy on the goods as still belonging to the transferor, or a receiver representing them can take them by whatever procedure the local law provides."

⁴⁷ In *Mutz v. Sanderson*, 94 Neb. 293, 143 N.W. 302 (1913) the Court held that a levy by a judgment creditor of the transferor on the transferred goods in the hands of the transferee was valid and sold, 94 Neb. at 295, 143 N.W. at 303: "The legislature evidently intended that a sale of a stock of goods in bulk made without compliance with the requirements of the statute, although it may be entirely valid as to all other persons, shall be void and of no effect against creditors; that is, that the corpus of the goods shall remain as fully subject to execution and levy for the debts of the seller as if the sale had never taken place."

transferee by proceedings in garnishment for the value of the transferred property⁴⁸ even though the transferee has sold the goods to another.⁴⁹

The Commercial Code resolves the question of whether a creditor has any rights against the property in the hands of a subsequent purchaser from the original transferee who held title subject to a defect by reason of noncompliance with Article 6. If the subsequent purchaser is a good faith purchaser for value without notice of the defect, then he takes the goods free of the defect.⁵⁰ If the purchaser does not give value or takes with notice of the noncompliance, then the purchaser will take subject to the transferee's defective title.⁵¹

BULK TRANSFERS BY AUCTION.

It is readily apparent that a bulk transfer by an auction sale cannot be subject to the same requirements as other bulk transfers. Two difficulties immediately arising are that neither the identity of the purchaser nor the price to be paid will be established until the sale actually takes place and hence no advance notice of these facts can be given to the transferor's creditors. If, however, such transfers were excluded from the purview of Article 6, a debtor could easily engage in a bulk transfer without any notice to his creditors whatsoever. Recognizing these problems, the Commercial Code deals with the problem of bulk transfers at auction sales in Section 6-108. The "auctioneer" is defined by the Code as the person or persons other than the transferor who are responsible for

⁴⁸ *Domicus v. Kelly*, 120 Neb. 588, 234 N.W. 416 (1931); *Cech v. Costello*, 117 Neb. 224, 220 N.W. 236 (1928); *Home Pattern Co. v. Gore*, 113 Neb. 535, 204 N.W. 68 (1925).

⁴⁹ *Interstate Rubber Co. v. Kaufman*, 98 Neb. 562, 153 N.W. 585 (1915); *Appel Mercantile Co. v. Barker*, 92 Neb. 669, 138 N.W. 1133 (1912). In the *Interstate Rubber Co.* case the Court said, 98 Neb. at 565, 153 N.W. at 586; "The correct rule seems to be: The purchaser of a stock of merchandise transferred to him in violation of the Bulk Sales Law holds the property as trustee for the seller's creditors, and his liability in that capacity may be enforced by garnishment, though he has paid the purchase price and has resold the stock." In *Niklaus v. Lessenhop*, 99 Neb. 803, 157 N.W. 1019 (1916) the trustee in bankruptcy of the transferor proceeded against the transferee in an action in the nature of a creditor's bill.

⁵⁰ U.C.C. § 6-110(2). For the Code definitions of "good faith", "value", "purchaser" and "notice" see §§ 1-201(19), 1-201(44), 1-201(33) and 1-201(25).

⁵¹ U.C.C. § 6-110(1).

the auction.⁵² In connection with the sale, the transferor must furnish a list of his creditors and assist in the preparation of a schedule of property as required in other bulk transfers.⁵³ The auctioneer must receive and retain the list of creditors and schedule of property⁵⁴ and give notice personally or by registered mail to those on the list of creditors and to all other persons who are known to hold or assert claims against the transferor.⁵⁵ This notice must, as in the case of bulk transfers which are not by auction, be given at least ten days before the sale occurs.⁵⁶ The sale is valid and the purchaser at the sale takes good title to the goods even though the auctioneer does not comply with the requirements of Section 6-108.⁵⁷ The auctioneer, however, if he knows that the auction constitutes a bulk transfer, is liable to the transferor's creditors "as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction" if he does not comply with section 6-108.⁵⁸

STATUTE OF LIMITATIONS.

Section 6-111 of the Code, by providing for a relatively short period of limitations, will have the effect of validating many defective transfers. Under this section, unless the transfer has been concealed, no action may be brought nor levy made more than six months after the date on which the transferee took possession of the goods.⁵⁹ In the case of a concealed transfer, the period allowed for action or levy is six months after its discovery.⁶⁰ While this short limitation period may protect innocent transferees for a fair and adequate consideration, it should be noted that nothing in Section 6-111 would affect a creditor's right to recover if he could show that the transfer was in fact a fraudulent transfer.⁶¹

⁵² U.C.C. § 6-108(3).

⁵³ U.C.C. § 6-108(2).

⁵⁴ U.C.C. § 6-108(3) (a).

⁵⁵ U.C.C. § 6-108(3) (b).

⁵⁶ *Ibid.*

⁵⁷ U.C.C. § 6-108(4).

⁵⁸ *Ibid.*

⁵⁹ U.C.C. § 6-111.

⁶⁰ *Ibid.*

⁶¹ See NEB. REV. STAT. §§ 36-401 to -409 (Reissue 1960).

OPTIONAL PROVISIONS NOT ENACTED IN NEBRASKA.

The official text of the Uniform Commercial Code contains several optional provisions which were not enacted in Nebraska. Although most of the prior bulk sales acts in effect in the various states only required that the creditors be given notice of the pending transfer, some jurisdictions had gone further in protecting the creditors by requiring the transferee to apply the consideration for the transfer to the creditor's claims. The drafters of Article 6 left this decision to the enacting state by providing optional Sections 6-106, 6-107(e), 6-108(3)(c) and 6-109(2) which could be enacted by those states which desired to furnish this additional protection.⁶²

CONCLUSION

Article 6 is intended to simplify the bulk sales law of the various states, and to a large extent it accomplishes this purpose. Although unusual situations may give rise to questions to which definitive answers are arguably lacking, the practitioner should have no problem in determining and complying with the requirements of Article 6 in the normal situation. A last word of warning should be added. There is perhaps, no area of the law where originality can lead to more potential difficulty. In complying with the requirements of Article 6 it is suggested that the language be rather slavishly followed.

⁶² As of 1962 these optional provisions had been enacted in Alaska, Kentucky, New Jersey, Oklahoma and Pennsylvania.