1968

Statutory Changes

Dudley Warner Woodbridge

*William & Mary Law School*

Repository Citation

https://scholarship.law.wm.edu/vabarnotes/50

Copyright © 1968 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/vabarnotes
Some 1954 Statutory Changes

1. V#2-19 omits April 13 (Thomas-Jefferson Day), June 3 (Jefferson Davis Day), October 12 (Columbus Day), and November 11 (Armistice Day) from the list of legal holidays.
2. The distinction between land lying west of the Alleghany Mountains and east thereof has been abolished. The statute of limitations is now 15 years throughout the state on motions for land adversely held by another. (V#8-5)
3. V#3-24. The limitation on actions for personal injuries (not death by wrongful act) is changed from one to two years.
4. V#3-38 which is our general venue statute provides that actions against non-residents, arising out of operation of motor vehicles, can be brought in the county or city in which the plaintiff resides, or where the cause of action arises.
5. V#5-122 which deals with a motion to strike an answer was amended to provide that the test of the sufficiency of any defensive pleading in equity shall be made by a motion to strike out.
6. V#5-122.1 permits a defendant to introduce evidence in all cases after his motion to strike has been overruled.
7. V#5-188 et seq. require a panel of 11 when the jury is composed of five persons and a panel of 13 when the jury is composed of 7 persons. This gives each side 3 peremptory challenges.
8. V#5-244 provides that the filing of plaintiff's action tolls the statute of limitations on defendant's counterclaims or cross-claims arising out of the same transaction.
9. V#8-277.1. Photographs and copies of hospital records and papers have been made admissible in evidence.
10. V#8-628 provides that no cause of action for injuries to a person or property shall be lost because of the death of the person liable or the death of the person injured. Thus if D injures P and D dies, or P dies from an independent cause the action does not abate. The statute of limitations is extended to two years.
11. V#8-9.1 provides that a power of attorney may be written so as not to terminate on disability of the principal. Note the language is "disability" and not "death".
13. V#17-83.4 et seq. permits the filing of "master deeds of trust" and the incorporation thereof by reference in subsequent deeds.
14. V#18-75.1 prohibits compulsory tests for drunkenness but if a person desires such a test he is entitled to receive the full assistance of the arresting authority in obtaining it, and the results of such test are made admissible in evidence.
15. V#18-329 permits the operation of motion picture theatres on Sunday.
16. V#18-348 prohibits the abandonment of an ice box which may become locked.
17. V#19-166 provides that a person charged with a misdemeanor and released under bail or recognizance and who fails to appear is deemed to have waived a trial by jury and may be tried in absentia upon a plea of not guilty.
18. V#19-186 was amended so that counties having a population of more than 95,000 are exempted from the requirement that no person residing within two miles of where a felony is alleged to have been committed is eligible to serve as a juror in the trial of the case.
19. V#19-241.1 makes Trial Justices and their clerks and officers issuing warrants, incompetent to testify in civil cases to the same extent as in criminal cases.
20. V#26-7.1 et seq. provide that the clerk of a court in which a fiduciary qualifies shall be deemed to have designated to receive service of process when the party cannot be served, after due diligence.
21. V#34-29 has increased the minimum exemption of the wages for the head of a family to $100 per month.
22. V#4-209.1 makes it reckless driving per se to drive at the speed of 75 miles per hour or over.
23. V#57-12 was amended to permit the trustees of religious societies to hold personality up to the value of two million dollars. (Old limit was $250,000)
24. V#63-358 provides that adopted children shall not inherit from and through their natural parents except that a child adopted by its step-parent shall inherit from its natural parent. It also provides that if an adopted child dies intestate the property of such adopted child shall pass as if he were the natural legitimate child of his adoptive parents.
The new corporation laws do not go into effect until January 1, 1957, so they are not covered in this summary. The materials on Corporations will be revised for the June 1957 examination in the light of the new law.

It would be foolish from the standpoint of the bar examinations to do more than note the most significant statutory changes a brief summary of which follows:

W/6-55.1 provides for survivorship in the case of joint bank accounts which are in the name of a husband and wife.

W/6-279 permits Small Loan companies to lend up to $600 to an individual. The former maximum was $300.

W/6-361 amends section 9 of the Uniform Negotiable Instruments law in that it now provides that an instrument is also payable to bearer when it is payable to the order of a fictitious or non-existing or living person not intended to have any interest in it, and such fact was known to the person making it so payable, or to his employee or other agent who supplied the name of such payee.

W/8-67.1 authorizes service on Commissioner of Motor Vehicles as agent of a non-resident motor vehicle operator for damages done anywhere in this Commonwealth rather than only on a highway.

W/8-220 (as amended in 1954) provides that no party shall be allowed to suffer a nonsuit unless he do so before the jury retire or before the suit or action has been submitted to the court for decision or before a motion to strike the evidence has been sustained.

W/8-269.1 makes information given by patients to any practitioner of any branch of the healing arts necessary to enable him to furnish professional care privileged. However, this is followed by a great big exception, to wit, "that when the physical or mental condition of the patient is at issue in such action, suit or proceeding or when a judge of a court of record, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment shall be privileged and disclosure may be required."

W/16.1-77. The jurisdictional amount for courts not of record has been raised from $1,000 to $2,000. They have exclusive original jurisdiction up to and including $300 exclusive of interest and attorney's fees and concurrent jurisdiction from $300 to $2,000. (If more than $300 is involved the defendant may remove the case to the proper court of record. W/16.1-92)

W/18-75.1 provides that when an accused is arrested for any crime involving a charge of intoxication he can demand within two hours of his arrest that a blood sample be taken. Note that he cannot be required to submit to any test for intoxication involving an analysis of his breath or any other bodily substance, nor is his failure to demand a test any evidence of intoxication and such failure shall not be subject to comment.

W/18-225.1 makes a "peeping Tom" guilty of a misdemeanor.

W/18-349.5 makes it a misdemeanor for one to fail to relinquish a telephone line in favor of one wishing to place an emergency call and W/18-349.6 also makes it a misdemeanor for one falsely to pretend an emergency in order to get the line.

W/26-45.1 permits fiduciaries to invest their funds in any type of security which man of prudence, discretion and intelligence might acquire or retain for their own account for investment (but not for speculation.)
1956 LEGISLATIVE CHANGES

Revised Oct. 1960

V#54-142 provides that no defendant who is sued by a contractor who has not obtained the certificate required for construction contractors who engage in work costing $20,000 or more may make the defense of illegality unless he affirmatively shows that the contractor had notice of the law prior to or at the time of the execution of the contract.

V#54-1 puts a spouse in second place (rather than in fourth place) so far as the descent of land is concerned, i.e. immediately after children and/or descendants of children. Note: As a result of this change there will be few (if any) cases in which dower or curtesy will be a life estate in the whole rather than in one third.

V#64-58 which provided that marriage shall revoke a will has been repealed.

1958 LEGISLATIVE CHANGES.

1. V#2-10 again makes November 11 a legal holiday (Veterans Day).

2. V#5-19.1 et seq. gives pilots of aircraft carrying passengers for hire powers of special policemen and conservators of the peace. Interference with or threat to interfere with the operation of such aircraft is a misdemeanor. Venue is in the court having criminal jurisdiction in the political subdivision where the plane took off before the commission of the offense or where it first landed afterwards, or over which the offense occurred.

3. V#8-14.1 provides for a five year statute of limitations for actions for damages based upon fluoridation of public water supplies.

4. V#8-59 now authorizes process against, or notice to, a domestic corporation if it be a city or town, to be served on its attorney or manager in addition to those previously designated.

5. V#8-218 as amended permits a trial judge to direct a verdict where he has granted a motion to strike the evidence of one of the parties and the direction is in conformity with his ruling on the motion to strike.

6. V#8-288 makes a husband or wife a competent witness against the other where either is charged with forging or uttering or attempt to utter a writing bearing the allegedly forged signature of the other.

7. In 1960 the 1958 modification of V#8-293 was repealed. See Number 5 of 1960 legislative changes.

8. V#8-316.1 et seq. adopts the Uniform Depositions Act. "Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness in this State, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this State" provided that the same privilege is extended by the other jurisdiction to persons in this State.

9. V#8-633 through 8-636 dealing with Death by Wrongful Act increased the statutory period in which such actions may be brought from one year to two years from the death of the injured person, provide that the periods of time a defendant is out of
1958 LEGISLATIVE CHANGES

10. V/13.1-26 as amended makes it unnecessary to give notice of the purpose of a stockholders' meeting except in the case of a special meeting.

11. V/16.1-162 is amended to permit the judge of a juvenile court to make public the name of offenders, the names of their parents, and the nature of the offense, if he deems it in the public interest.

12. V/16.1-176 makes it possible for juvenile offenders over 14 years of age who are guilty of crimes which if committed by an adult could be punished by imprisonment in the penitentiary for a period of 20 years or more to be indicted for felonies by a grand jury and tried in the regular courts if the Commonwealth's Attorney deems such action to be in the public interest.

13. V/18-70.1 reads, "If any person maliciously cause any other person bodily injury by means of any acid, lye or other caustic substance or agent, he shall be punished by confinement in the penitentiary for life or any term not less than one year."

14. Under V/18-76 if a driver of a car is convicted of a second offense of drunken driving within ten years of conviction of his first offense there is a mandatory jail sentence and under V/18-77 a mandatory forfeiture of his operator's license for three years. In the case of juveniles a finding of not innocent has the same effect as one of guilty in the case of adults so far as forfeiture of operator's license is concerned. A conviction for drunken driving in any State having similar laws to our own, or for violation of a city, town or county ordinance of similar import is considered a prior conviction.

15. V/18-187.1 et seq. are new. They provide that anyone who wilfully conceals the goods of any store, while still upon the premises, shall be guilty of a misdemeanor, and that the merchants and his agents or employees who cause the arrest of any such person shall not be held civilly liable for unlawful detention, false imprisonment, false arrest, slander, malicious prosecution, or assault and battery if there is probable cause to believe that the person committed wilful concealment of goods.

16. V/18-220.1 makes it a statutory felony to take, drive or use a motor vehicle not his own without the consent of the owner with the intention of temporarily depriving the owner of its use and expressly provides that consent of the owner on prior occasions shall create no presumption of consent on a later occasion.

17. V/18-239.1 makes it perjury for any person with the intent to testify falsely, to knowingly give testimony under oath as to any material matter and subsequently on another occasion to give conflicting testimony under oath as to the same matter.

18. V/18-348.2 makes it a misdemeanor for any person (other than a licensed physician) to use any X-ray, or other apparatus employing roentgen rays, in the fitting of shoes.

19. V/19-186 as amended now reads, "No person residing within two miles of the place where the crime is alleged to have been committed shall be allowed to serve as a juror in any felony case in the circuit court of any county; provided, however, that the impanelling of such a juror shall not be cause for summoning a new panel, or for setting aside a verdict or granting a new trial, unless objection thereto specifically pointed out is made before the jury is sworn; and provided further, however, that such a juror may be impanelled and serve in any county having a population in excess of ninety-five thousand or in any county containing a town, the population of which is more than half the entire population of the county."

20. V/20-97 as amended now reads in part, "No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties is domiciled in, and is and
Legislative Changes

has been an actual bona fide resident of this State for at least one year preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in, and is and has been an actual bona fide resident of this State at the time of bringing such suit. For the purposes of this section only, if a member of the Armed Forces of the United States has been stationed in this State and has lived with his or her spouse for a period of one year or more in this State next preceding a separation between such parties, and such service person and spouse continue to live in this State until and at the time a suit for divorce or legal separation is commenced, then such person and his or her spouse shall be presumed to be domiciled in and to have been a bona fide resident of this State during such period of time. (The last sentence is new)

21. V#22-231.1(new) reads as follows, "In the maintenance of order and discipline, and in the exercise of a sound discretion, a principal or a teacher in a public school or a school maintained by the State, may administer reasonable corporal punishment on a pupil under his authority, provided he acts in and good faith and such punishment is not excessive."

22. V#31-26 et seq.(new) is called the Uniform Gifts to Minors Act. Its provisions are too detailed for summary here, but the reader should know that there is such an act, and that by V#31-34(b) it is not to be construed as providing an exclusive method for making gifts to minors.

23. Section rewritten by 1960 legislature. See 17 of 1960 Legislative changes.

24. V#38.1-64 and 38.1-70.3 provides that any of the acts set forth below when done by a foreign insurance company not authorized to do business in this State or when done by an unauthorized broker or agent, shall constitute an appointment by the company or agent of the clerk of the Corporation Commission as its agent for the service of process; (1) The issuance or delivery of contracts of insurance to residents of this State, (2) the solicitation of applications for such contracts, (3) the collection of premiums or other consideration for such contracts, (4) the transactions of any other insurance business in connection with such contracts.

25. V#38.1-361 requires all policies of liability insurance on motor vehicles issued in this State to contain provisions undertaking to pay the insured, any person operating the car with the consent of the insured, and any guest, all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle within certain limitations. If the owner or operator is unknown he is deemed to be uninsured and may be proceeded against as "John Doe" and service of process may be made on "John Doe" by delivery of a copy of the motion for judgment to the clerk of the court in which the action is brought. The insurance company shall be served as at present and may defend "John Doe".

26. V#55-19 was amended to increase the permissible corpus of spendthrift trusts from $100,000 to $200,000.

27. In 1956 Section 169 of the Virginia Constitution was amended by adding thereto, "The General Assembly may define as a separate subject of taxation household goods and personal effects and may allow the governing bodies of counties, cities, and towns to exempt or partially exempt such property from taxation. V#58-829.1 passed in 1958 expressly gives counties, cities, and towns this privilege starting with the tax year of 1959."
5. Revised October 1960

28. In Benrus Watch Co. v. Kirsch, 196 Va. 91, the Fair Trade Act (V#59-1 et seq) was declared void because in conflict with a later act (the anti-monopoly act--V#59-20 et seq). In 1958 V#59-8.1 et seq. were enacted. This is a new "Fair Trade Act." Since it is a later act than the anti-monopoly act it will govern in case of conflict. The purpose of the act is in part "to protect and preserve small business." The owner of a trade mark or trade name is allowed to fix minimum retail prices of the articles mentioned in the Act.

29. V#64-57.1 provides that wills of living persons may be lodged for safekeeping with clerks of courts having probate jurisdiction where such persons have their residences.

30. V#64-138 was rewritten and now provides that the personal representative of any deceased person who had made a written contract to convey land or any interest therein may do all things necessary to effect the transfer of such realty to the purchaser.

31. The Congress of the United States has amended sections 1331 and 1332 of Title 28 so as to substitute $10,000 in place of $3,000 in all cases now requiring at least $3,000 for federal district court jurisdiction. For purposes of citizenship under the diversity of citizenship provisions a corporation is deemed a citizen of the State by which it is incorporated and of the State where its principal place of business is located. Where the claim of a plaintiff is adjudged to be under the jurisdictional amount (as where he sues in good faith for $12,000 and recovers judgment for $8,000) without regard to any counterclaim a Federal District Court may deny costs to the plaintiff and impose costs on him in its discretion. Workmen's Compensation cases brought in state courts can no longer be removed to the federal courts because of diversity of citizenship. This change places the workmen's compensation cases in the same category so far as removal is concerned as cases brought under the Federal Employers' Liability Act, the Jones Act, and the Fair Labor Standards Act.

The more Important Statutory Changes Affecting Bar Examination Subjects--1960

1. V#6-357 (Negotiable Instruments)," ** * But the negotiable character of an instrument otherwise negotiable is not affected by a provision which ** *(5) States that such instrument is secured by a deed of trust referred to therein.

2. V#8-111.1(Pleading and Practice)ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS WITHOUT FORMAL PROOF IN CERTAIN CASES.-(a)After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within ten days after commencement of the action, leave of court, granted with or without notice, must be obtained. Copies of the document shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify
so much of it as is true and deny only the remainder.

(b) Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

3. V#8-135.1 (Liability of infants on loans to defray expenses of higher education). This section makes minors sixteen years of age or over liable as if adults for loans procured by a representation in writing that the proceeds are to be used to defray expenses incurred by reason of attendance at an institution of higher education which is duly accredited.

4. V#8-286 (Testimony of husband and wife against each other when crime is committed against child of either). This reads in part, "In the prosecution for a criminal offense committed by one against the other or against a minor child of either not over sixteen (formerly 12) years of age or against one charged with forgery of the name of the other ** each shall be a competent witness except as to privileged communications."

5. V#8-293 (Contradiction by prior inconsistent writing). The 1958 amendment allowing admission of ex parte written statements or affidavits in personal injury cases if five days prior notice had been given was repealed. The following sentence was added, "But nothing in this section shall be construed to prohibit the use of any such ex parte affidavit or statement in an action on any insurance policy based upon a judgment recovered in a personal injury or death by wrongful act case."

6. V#8-386 (When does a judgment for money become a lien on real estate?) This section has been rewritten and greatly simplified. It now reads, "Every judgment for money rendered in this State by any state or federal court or by confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated."

7. V#8-390 now provides that revived judgments shall not be valid liens on land as against purchasers thereof for a valuable consideration without notice until and except from the time that they are duly docketed.

8. V#8-654.1 makes the parents of minors under 18 years of age and living at home liable to not exceeding the sum of $200 for damages done in any one incident to public property as the result of such minor's wilful or malicious injury thereof.

9. V#13.1-435 provides that whenever a security issued by a corporation organized under the laws of Virginia shall be registered in the name of two or more persons jointly, or in the name of a man and woman as tenants by the entireties, in each case with right of survivorship, the corporation may treat the survivor or survivors as owners for all purposes unless such transfer to the survivor has been enjoined. This statute appears to be meant to protect the corporation and not to determine the ultimate rights of the survivor as against other claimants.

10. V#18.1-15.1 makes it a misdemeanor (maximum penalty one year in jail plus a fine of $1,000) to conspire to trespass on property after having been forbidden orally, in writing, or by sign to do so. V#18.1-173 has similar provisions with reference to the trespassers, and 18.1-173.1 applies to those who instigate such trespasses.

11. In 18.1-227 the legislature attempts to define the word "obscene". It means "that which considered as a whole has as its dominant theme or purpose an appeal to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters." Violation of the laws about obscenity are made misdemeanors.
Legislative Changes 1960.

12. V 18.1-340.1 declares that in any prosecution for violation of the laws against operating a lottery "no consideration shall be deemed to have passed or been given because of any person's attendance upon the premises of another; his execution, mailing or delivery of an entry blank; his answering of questions, verbally or in writing; his witnessing of a demonstration or other proceeding; or any one or more thereof, where no charge is made to, paid by, or any purchase required of him in connection therewith.

13. V 18.1-358 is the amended controversial Sunday law. Read it, but don't try to learn it in detail. WORKING OR TRANSACTING BUSINESS ON SUNDAY.--On the first day of the week, commonly known and designated as Sunday, it shall be unlawful for any person to engage in work, labor or business or to employ others to engage in work, labor or business except in household or other work of necessity or charity. The exemption for works of necessity or charity contained in the preceding sentence shall not be deemed to include selling at retail or wholesale or by auction, or offering or attempting to sell, on Sunday, any of the following: jewelry; precious and semiprecious stones; silverware; watches, clocks; luggage; musical instruments; recordings; toys(excluding items customarily sold as novelties and souvenirs); clothing and wearing apparel; clothing accessories; footwear; textile yard goods; housewares; china; kitchenware; home, business, office or outdoor furniture, furnishings and appliances; sporting goods(excluding sales or rental of bathing, boating, and fishing paraphernalia and equipment, and sales or rental on the premises where sports, athletic events or recreational facilities are located or conducted of equipment essential to the normal use or operation of such premises for the purposes specified) pets, pet equipment or supplies; cameras and photographic supplies(excluding film and flash bulbs); hardware; tools; paints; building and lumber supplies and materials; motor vehicles; trailers(excluding mobile homes); farm implements; lawn and garden equipment and supplies; farm produce(excluding sales of farm produce grown by the seller and sold at roadside stands or at the place where grown) or fresh, frozen or salt meats, poultry or seafood customarily inedible without further cooking or preparation(excluding smoked or cured hams). No inference shall arise from the foregoing enumeration of classes of personal property that sales or offers or attempts to sell other classes of personal property not mentioned are included within the above exemption for works of necessity or charity. This section shall not apply to furnaces, kilns, plants, wholesale food warehouses, ship chandleries, and other business of like kind that may be necessary to be conducted on Sunday, nor to the publication, distribution and sale of newspapers or magazines, nor to the sale of motor fuels or oils, repair parts or accessories for immediate necessary use in connection with motor vehicles, boats or aircraft, nor to the operation of motion picture theatres, nor to sports, athletic events, scenic, historic and recreational and amusement facilities.

14. V 19.1-163.1 (Criminal Procedure) reads: No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing.

15. V 20-91 (Domestic Relations) subsection(9) adds an additional grounds for divorce, namely if both "husband and wife have lived separate and apart without any cohabitation and without interruption for three years, and at the time of separation were each resident and domiciled in Virginia." Divorce on this ground shall not be granted where service of process is by publication.

16. V 20-118 (Domestic Relations) does away with the four months' waiting period after an absolute divorce before the parties can marry. But if objections or exceptions are noted or filed to the final decree and a bond is given staying the execution thereof, the court shall decree that neither party shall remarry pending the perfecting of an appeal.
17. W#34-29 again modifies the poor debtors' exemption for householders. Instead of an additional exemption of $15 per child, 75% of a wage earner's salary in excess of the minimum $100 per month exemption but not in excess of $150 per month maximum exemption is made exempt from attachment or garnishment. It is as applicable to non-resident householders as to resident ones. Non-householders are entitled to 50 per cent of the wage exemption granted to householders.

18. W#37-125.1 requires those legally liable for the support of dependents in the State's Mental hospitals to pay costs of keep not exceeding $125 per month. (Formerly $65 per month.)

19. W#38.1-363.1 provides that the standard policy of fire insurance shall not cover loss caused by nuclear reaction, radiation, or radioactive contamination, whether directly or indirectly resulting from an insured peril. However the insurer may, if it wishes, add a clause specifically assuming such risks.

20. W#43-4.1 (Recording Acts) provides that on and after July 1, 1960 all memoranda or notices of liens or other documents formerly required to be recorded in the miscellaneous lien books shall henceforth be recorded in the deed books instead, and shall be indexed in the general index of deeds, and such general index shall show the type of such lien.

21. W#54-66: "Any applicant failing to pass (the bar) examination given after July 15, 1960, may after such failure, be re-examined not exceeding four additional times upon showing to the Board that he has diligently pursued the study of law since the former examination and that he remains otherwise qualified under the provisions of this article". However, the Board, for good cause, may allow an applicant to take additional examinations.

22. By W#55-210.1 et seq. Virginia has adopted "The Uniform Disposition of Unclaimed Property Act." Under its provisions bank accounts that have remained inactive for 17 years, uncashed obligations of banks such as certificates of deposit, cashier's checks, bank drafts that are 17 years past due, unclaimed contents removed from safety deposit boxes for 17 years, public utility deposits unclaimed for 7 years, and some other items are presumed to have been abandoned, and eventually become the Commonwealth's property unless the owners make claim therefor and prove ownership in accordance with the provisions of this act.

23. W#64-70 modifies the law with reference to pretermitted children in the following situation: If the testator made a will while he had a child or children and these are not provided for in the will or by a settlement, and a child be born after such will has been made, then such child shall not succeed to any portion of testator's estate as there is no reason to prefer such child over the other child or children.
1962 Statutory Changes of Especial Interest to Those Taking the Bar

Examination.

1. V#4-15.2 reads in part: "The State tax imposed on alcoholic beverages sold at government stores shall be deemed a tax upon the purchaser thereof." The object of this statute is to make the tax deductible on income tax returns. The amount of the tax is printed beside the price of each item in a separate column.

2. V#5-54 provides that when the balance in any bank or trust company to the credit of a deceased person, upon whose estate there shall have been no qualification, shall not exceed $1,000 (formerly $300 and later $500) it shall be lawful for such bank or trust company, after 120 days from the death of such person, to pay such balance to his next of kin.

3. V#6-129.1, 130 and 131 make it a misdemeanor to draw checks for the payment of wages when the drawer knows he does not have funds or credit sufficient to take care of the check. Moreover, the person so drawing the check is made personally liable for the amount thereof. No representations with reference to the check are admissible unless written on the check. Failure to make the item good within five days after notice of its dishonor constitutes prima facie evidence of knowledge the check was bad. No action of malicious prosecution lies against anyone causing the arrest of the drawer if there has been presentment, dishonor, notice, and the lapse of five days without the check having been made good.

4. V#6-577 through 585 provides for the creation of real estate investment trusts. Such a trust is defined as a trust created under this act (a) for the primary purpose of acquiring ownership of one or more of the following: (1) land and improvements thereon and the development thereof; (2) obligations secured by deeds of trust or other lien instruments on real estate, (3) personal property incidental to the operation of real estate owned by the trust, (4) leases and limited interests in real estate, and (b) which provides in the declaration of trust that the property and business of the trust shall be held and managed by trustees who are residents of Virginia and for the issuance of transferable certificates of interest.

Under this Act two or more persons may form a trust by executing and recording a declaration of trust which shall set forth certain information.

Creditors of the trust can look only to the assets of the trust.

The duration of a trust may be unlimited and a trust shall not be deemed to violate any rule against perpetuities or accumulations or to unlawfully suspend the power of alienation.

5. PRIVILEGED COMMUNICATIONS-MINISTERS. V#8-289.2 provides that no regular minister of religion shall be required in any civil action to disclose any information communicated to him in a confidential manner and in his professional capacity wherein such person so communicating such information about himself or another is seeking spiritual counsel relative to the information so imparted.

6. LIEN OF A CONFESSED JUDGMENT now attaches from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city in which land of the defendant lies. V#8-358.

7. V#8-653 relating to NOTICE TO BE GIVEN CITIES AND TOWNS OF CLAIMS FOR DAMAGES FOR NEGLIGENCE now provides that if the injured party is comatose during the 60 days period for giving notice but clearly shows that due to the injury sustained he was physically or mentally unable to give such notice, then the time for giving such notice shall be tolled until the claimant sufficiently recovers so as to be able to give such notice.

8. By V#8-654.2 an owner, lessee or occupant of premises who gives permission without consideration to another person to hunt, fish, trap, camp or hike upon such premises shall owe no duty to keep the premises safe for entry or use by such person or to give warning of any hazardous condition.
9. WHEN LACK OF PRIVITY NO DEFENSE (V#8-654.3) - Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer or seller of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the manufacturer or seller might reasonably have expected to use, consume, or be affected by the goods.

10. V#8-636 of our Death by Wrongful Act Statutes increased the maximum allowed from $30,000 to $35,000.

11. CORPORATIONS. V#13.1-62 was amended to read, "No redemption or purchase of redeemable shares shall be made by a corporation which is insolvent, or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution."

12. MURDER by poison, lying in wait, imprisonment, starving, or by any wilful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, abduction as defined in V#18.1-38, arson, rape, robbery or burglary is murder of the first degree. All other murder is murder of the second degree. V#18.1-21. The underlined portion was added in 1962. The abduction referred to is abduction with intent to extort pecuniary benefit, or to defile a woman against her will, or of any female under sixteen years of age for the purpose of concubinage or prostitution. This type of abduction is a capital offense.

13. V#18.1-55 through 59 deal with tests of blood samples of those accused of driving while under the influence of alcohol. They provide that any person who operates a motor vehicle upon the public highway in this State shall be deemed thereby to have agreed as a condition of such operation to consent to, and shall be entitled to, have a sample of his blood taken for a chemical test to determine the alcoholic content thereof if he is arrested within two hours of the alleged offense. The statute sets forth the procedure that must be followed in detail, and a failure of the Commonwealth to comply with each detail is regarded as prejudicial and requires an acquittal unless such failure was due to the fault of the accused. Two samples are taken, and one of these is given to the accused so that he can have his own test made. If the accused refuses after due warning to permit the test, he may be tried for driving under the influence, but the fact of refusal is not admissible in evidence nor can it be commented upon. But such a refusal is an independent misdemeanor.

14. A change in V#18.1-102 adds a pony to the list of animals the larceny of which is a felony regardless of their value.

15. V#18.1-119.1 makes it a crime to obtain or attempt to obtain credit by the use of any false, counterfeit or revoked credit card known to be such by the accused. Another section of this statute makes it a crime to obtain telephone or telegraph service by any scheme or device with intent to avoid the payment of lawful charges.

16. V#18.1-119.2 makes it a misdemeanor for any purchaser falsely to represent in writing in any contract for the purchase of real estate that the property referred to in such contract is intended for use as the personal residence of such purchaser.

17. V#18.1-146.1 makes it a misdemeanor for any retailer to accept, in payment for any food sold by him to a customer, a promissory note or notes for an amount in excess of twice the sales price of food delivered by him to the customer. The object of this statute is to break up the practice of selling food for future delivery at low prices and taking notes for same each note being payable at the end of a certain month. The customer is told that the notes will not become due until after the food is delivered. The seller then discounts the notes with a holder in due course who is able to get judgment on the notes even if no food is ever delivered.
18. V#18.1-238.1 makes it a misdemeanor for any person maliciously to advise or in­
form another over any telephone in this State of the death of, accident to, injury
to, illness of, or disappearance of some third party, knowing the same to be false.

19. V#18.1-238.2 makes it a misdemeanor for any person to cause another person's
telephone to ring without intent to converse but with intent to annoy such other
person.

20. GROUNDS FOR DIVORCE--V#20-91(9) was amended to read "On the application of either
party if and when the husband and wife have lived separate and apart without any co­
habitation and without interruption for three years. A plea of res adjudicata or of
recrimination with respect to any other provision of this section shall not be a bar
to either party obtaining a divorce on this ground."

Special note: As a result of this change it is no longer necessary for the parties
to have been each resident and domiciled in Virginia at the time of their separation,
and such a divorce may now be granted on service of process by publication if such
service is otherwise proper.

21. V#20-107 provides that the court trying a divorce case may make such further
decree as it shall deem expedient concerning the estate and maintenance of the
parties. The 1962 amendment adds, "The word 'estate' as used in this section shall
be construed to mean only those rights of the parties created by the marriage in
and to the real property of each other."

22. Safety Belts--Negligence. V#46.1-309.1 reads, "(a) No motor vehicle, designed and
licensed primarily for private transportation and manufactured for the year 1963
or for subsequent years, shall be approved on inspection—unless the front seats
thereof be equipped with safety belts—.(b) Failure to use such safety belts—
shall not be deemed to be negligence."

23. Emergency Medical Care--Negligence. V#54-276.9 reads, "No person licensed to
practice medicine in this State, who in good faith renders emergency care to any
person injured as a result of a roadside or highway accident, at the scene of such
accident, shall be liable for any civil damages as the result of any act or omission
in rendering such emergency care: provided, however, that no established doctor­
patient relationship between practitioner and injured person pre-existed such
emergency treatment."

24. Can Lawyers Incorporat~ No, but consider V#54-87J to 898. These sections deal
with the formation of Professional Associations. An associate is a member of a
professional association which is defined as an unincorporated association, as dis­
tinguished from a partnership or corporation, organized under these statutory pro­
visions for the practice of architecture, professional engineering, land surveying,
certified public accounting, dentistry, optometry, the healing arts, veterinary
medicine, surgery, and law.

Any three or more persons holding a valid license for the practice of the same
profession may organize such an association. They have practically the same powers
as a corporation including the power of perpetual succession by its association
name. They may own property. They have a board of directors and by-laws. Certifi­
cates of ownership are given each associate. These may be transferred to any other
associate, and even to other qualified persons in accordance with the by-laws. No
associate is liable for the torts of anyone but himself and those in his immediate
control. The Association, however, is liable for the torts of all its associates
and employees. The associations are treated as corporations for income tax purposes.

25. The first sentence of V#55-6 now reads, "Any interest in, or claim to real
estate, including easements in gross, may be disposed of by deed or will". The under­
lined words were added.
26. V\#55-17.1 (New) reads in part, "No trust relating to real estate shall fail—because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber or otherwise dispose of property therein described shall be effective and no person dealing with such a trustee shall be required to make further inquiry as to the right of such trustee to act nor shall he be required to inquire as to the disposition of any proceeds."

27. V\#11-9.2 (New) reads in part, "No agency created by a power of attorney in writing given by a principal shall be revoked or terminated by the death or disability of the principal as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, has acted or acts, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid—, shall be binding on the principal or his heirs, devisees, legatees or personal representative—."

28. HORIZONTAL PROPERTY ACT—V\#55-79.1 to 55-79.33. The purpose of this act is to facilitate the acquisition of ownership of individual apartments. A condominium is defined as ownership of single units in a multiple unit structure with common elements. A condominium project is one whereby four or more apartments, rooms, office spaces or other units in existing buildings are offered or proposed to be offered for sale. General common elements include the land on which the building stands, basements, roofs, elevators, garbage incinerators, central services, etc. Whenever a developer or owners of a building expressly declare, through the recording of a master deed or lease, their desire to submit their property to the regime established by this act, there is thereby established a horizontal property regime. Then an apartment in the building may be individually conveyed and encumbered as if it were entirely independent of the other apartments. The regime may make its own by-laws. Each apartment must pay its share for the maintenance of the common elements.

29. STATE TAXATION. V\#58-27.1 authorizes the Governor to enter into reciprocal agreements with the authorities of the State of Maryland and of the District of Columbia with respect to the collection of all taxes.

30. STATE TAXATION. V\#58-151.1 et seq. provide for withholding income taxes from wages and for declarations of estimated income taxes.

31. V\#64-18 has been amended to expressly provide that no person who has been convicted of murder of an insured shall be entitled to life insurance as beneficiary. The proceeds are payable as if such murderer had predeceased the insured if there is such a provision in the policy. If there is no such provision then it is payable to the estate of the insured. An insurance company which makes a payment to the murderer without knowledge of the facts is protected from having to pay again.

32. V\#64-54 has been amended to read, "No person shall, on account of his being an executor of a will, or a trustee appointed thereby, be incompetent as a witness for or against the will."

33. WILLS—TRUSTS. See 197 Va.115 on p.1718 of the Cases on Wills as V\#64-71.1 changes the law laid down in that case. It is now provided that a devise or bequest in a duly executed will may be made to the trustee of a trust established in writing prior to the execution of such will, that such trust may be an unfunded insurance trust with the trustee being the beneficiary under the insurance contract and with the testator having the right to change the beneficiary and/or having any or all other rights of ownership in such contract, that for the purposes of this section, an unfunded insurance trust shall be deemed established upon execution of the instrument creating such trust, that such devise or bequest shall not be invalid because the trust is amendable or revocable or because the trust instrument or any amendment thereto was not executed in the manner required for wills or because the trust was amended after the execution of the will, and that the property so devised
or bequeathed shall be subject to the terms of the trust as they appear in writing
at the testator's death by becoming a part of any corpus then in the trust.

34. VOLUNTARY STERILIZATION. V#32-423 et seq. deal with voluntary sterilization.
Under these statutes if a person over 21 years of age requests to be sterilized,
if his or her spouse also consents, if the consequences of the operation are fully
explained, if there is at least a 30 day waiting period in which the party so re­
questing may withdraw his consent, if the operation is performed by a licensed
doctor in collaboration with another licensed doctor, and if the operation is per­
formed in a licensed hospital in this State, then such an operation may be legally
performed without civil or criminal liability other then under the general law of
negligence.

If the person upon whom the operation is to be performed is under 21 years of age
there are additional requirements.
1964 Legislative Changes of Particular Interest to Those Studying for the Bar Examinations.  

1. Ch. 219 enacts the Uniform Commercial Code and repeals many sections of the Code inconsistent therewith. But since the Code and the repeals do not become effective until January 1, 1966, and then apply only to transactions entered into after that date, these matters are omitted for the present. In the meantime bar examination questions answered as per present law or as per the UCC are acceptable under the present policy of the Board.

2. (Judgment Liens) V#8-366 as amended in 1960 and again in 1964 makes judgments liens on real property effective from the time such liens are recorded (docketed) on the judgment lien docket of the clerk's office of the county or city wherein such land is located. Note well that this radically changes the law in at least two respects, (1) The principle that docketing is unnecessary as between creditors is no longer law, and (2) in the case of matured causes at the same term of court the lien of judgments no longer relates back so as to commence as of the first day of the term. However, in the case of a docketed revived judgment, while the revived judgment is ineffective until docketed, upon re-docketing, it becomes effective as of the date of the docketing of the original judgment. Furthermore no redocketing is necessary as a result of a city annexing county lands.

3. V#8-24.2 provides that no action for damages for injury to property or person or for a wrongful death arising out of an unsafe condition of an improvement to real property shall be brought against any person performing or furnishing the design, planning or construction of such improvement more than five years after the furnishing of such service or construction. However, this limitation does not apply to actions against any person in actual possession or control as owner, tenant, or otherwise at the time the unsafe condition constitutes the proximate cause of the injury.

4. New sections V#8-81.1 et seq. give Virginia Courts "long arm" personal jurisdiction even against non-residents who do certain acts which give persons in Virginia causes of action against them. These sections are cumulative and deprive no one of any rights he may have had before their enactment. They cover seven types of acts as follows:
   (1) Transacting any business in this State;
   (2) Contracting to supply services or things in this State;
   (3) Causing tortious injury by an act or omission in this State;
   (4) Causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this State;
   (5) Causing injury in this State to any person by breach of warranty expressly or impliedly made in the sale of goods outside this State when he might reasonably have expected such person to use, consume, or be affected by the goods in this State, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods sold or consumed or services rendered in this State;
   (6) Having an interest in, using, or possessing real property in this State; or
   (7) Contracting to insure any person, property, or risk located within this State at the time of contracting.

The venue of such actions is governed by the general venue statute (V#8-36), but if no provision thereof is applicable it is where plaintiff resides or where the cause of action or any part thereof arose. Service of process may be made on the Secretary of the Commonwealth who, for this purpose, shall be deemed to be the statutory agent of the defendant.
5. V#8-157(a) relating to removal of causes from one court to another has been amended to read: "A circuit, corporation or city court wherein a suit, motion, or other civil proceeding is pending, or the judge thereof in vacation, may, on motion by any party, after twenty days' notice to the adverse party or his attorney, and for good cause shown, order any suit, motion, or other civil proceeding pending therein, to be removed to any other court having jurisdiction of the subject matter. Good cause shall be deemed to include, but not to be limited to, the avoidance of inconvenience to the parties and witnesses, in the interest of justice."

6. V#8-200 relating to the number of peremptory challenges allowed where the jury consists of either of five or seven now limits the number of such challenges to three on each side even though there be more than one plaintiff or defendant.

7. V#8-293 relating to impeachment of witnesses by means of a prior inconsistent written statement has been amended to provide that no extra-judicial recording or reproduction or transcript thereof may be used to contradict the witness in a personal injury or death by wrongful act case.

8. V#8-305 relating to the taking of depositions has been amended to allow depositions to be taken before any consul or commissioned officers of the armed services of the United States.

9. V#8-313, relating to the circumstances under which a deposition may be read, now includes the case where "a physician, surgeon or dentist, who in the regular course of his profession treated or examined any party to the proceeding, and whose office is more than twenty-five miles from the place of trial."

10. V#8-357 which has to do with the setting aside of judgments by confession now provides that the judgment debtor may move to set aside such a judgment within 21 days after notice to him of entry of such judgment and after notice to his judgment creditors.

11. Suppose an appellant who desires to take his case to the Supreme Court of Appeals does everything required of him, but a clerk fails to do his part, will the appeal fail? A new paragraph has been added to V#8-489 which reads in part as follows "***no appeal, writ of error or supersedeas shall be refused or dismissed for failure to deliver the record within the required time if it shall appear from evidence satisfactory to the Supreme Court of Appeals that the clerk of the court below failed to deliver to the clerk of the Supreme Court of Appeals the record on appeal within the required time after having been notified to do so in accordance with the provisions of the rules of court of the Supreme Court of Appeals."

12. P is injured as a result of D's negligence. P dies from a heart attack not connected with the injury several months later. P's personal representative thereafter sues D. Is he entitled to recover damages for P's mental anguish, pain and suffering? V#8-628.1(not retroactive) which provides for the survival of personal actions was changed so as to allow the recovery of such damages. Note: If P had died as a result of D's negligence then such damages cannot be recovered, but the mental anguish of his statutory beneficiaries (rather than that of P) is a proper matter to be considered in determining damages under the death by wrongful act statutes.

13. P was injured. He was thereafter interviewed by X, an employee of an insurance company. What P stated was recorded by X. Is P entitled to a copy of the transcribed recording? V#8-628.2 as rewritten now reads: Any person who takes from a person who has sustained a personal injury a signed written statement or voice recording of any statement relative to such injury shall deliver to such injured person a copy of such written statement forthwith or a verified typed transcription of such recording within thirty days from the date such statement was given or recording made, when and if the statement or recording is transcribed or in all
14. A new section, V#8-825.1, permits counties and cities to designate storage areas so that the personal property of ejected tenants can be taken from the streets and stored in the designated area all at the expense of the tenant owner. It also provides for the sale of such property after proper notice in the event these charges are not paid within the time allowed.

15. Virginia’s Implied Consent Law has been rewritten. The gist of this law (now V#18.1-55.1) is that any person driving a car on the public highways gives his consent in the event he is arrested for driving under the influence of intoxicants to the withdrawal of a blood sample unless he refuses to do so in a signed writing on a form furnished by the Chief Medical Examiner. If a defendant refuses to permit the taking of a sample without good reason his license is subject to revocation. He is entitled to a trial on such an issue. Detailed and elaborate directions as to the taking and testing of the blood samples (one of which is given to the accused) are set forth. But the failure to comply with these directions no longer requires acquittal, but only goes to the weight of the evidence. Blood sample evidence does not preclude the admission of any other competent evidence. Accused need not sign any form releasing those who take his blood from liability.

16. V#18.1-131.1 does not make ordinary advertisements offers, but does make it a criminal offense to offer for sale to the public any merchandise, service or thing with intent not to sell, or with intent not to sell at the price or upon the terms advertised unless the advertisement clearly states that there is only a limited supply and the advertiser in fact has such a supply. A refusal to sell as above is prima facie evidence of the criminal intent.

17. X offered $50,000 reward for information leading to the arrest and conviction of the person or persons who murdered M. A sheriff furnished this information in line of his duty. Is he entitled to the reward? Yes. Chapter 171 of the 1964 Acts of Assembly after first pointing out that sheriffs and sergeants and other law enforcement officials often work diligently far beyond the call of duty to apprehend criminals, and that the case of Buck v. Nance, 112 Va.28 (1911) held that it was against public policy to allow law enforcement officers to claim or receive rewards, and that this policy has already been changed by statutes (V#15.1-138 and 52-10) in the case of police officers of cities and towns, enacts, "Any sheriff, deputy sheriff, sergeant, deputy sergeant or any other officer may claim and receive any reward which may be offered for the arrest and detention of any offender against the criminal laws of this or any other Commonwealth or nation." V#19.1-6.1.

18. V#19.1-186.2 is new, and reads, "When any person is found guilty of a traffic offense, the court or jury trying the case may consider the prior traffic record of the defendant before imposing sentence as provided by law. After the prior traffic record of the defendant has been introduced, the defendant shall be afforded an opportunity to present evidence limited to showing the nature of his prior convictions, suspensions and revocations.

19. H and W, husband and wife, have lived separately for twenty-five months as a result of H’s cruelty. At the end of a year from the separation H applied for a divorce but the Court refused to grant him one. H then lived in adultery with X. H is now seeking a divorce against W for a second time. What decree? Decree for H as V#20-91 as amended in 1964 now reads "A divorce from the bond of matrimony may be decreed: (9) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for two years. A plea of res adjudicata or of recrimination shall not be a bar to either party obtaining a divorce on this ground."

Legislative Changes P.16.
20. Who is privileged to drive motor vehicles in excess of the speed limit? By V# 46.1-199:
(1) The police when operating vehicles with due regard for safety (a) in the chase or apprehension of criminals or suspected criminals (b) in the testing of the accuracy of speedometers on police vehicles or of the radio microwave; (2) the operators of fire department vehicles when traveling in response to a fire alarm or pulmotor call; (3) ambulances when traveling in emergencies outside the corporate limits of cities and towns—all provided the cars are equipped with flashing red lights and sirens. However, no civil or criminal immunity is extended to the drivers of such vehicles for the negligent operation thereof.

21. V#46.1-351.1 and 351.2 have been added. They provide for the forfeiture to the Commonwealth of any car which is being driven by a person whose driver's license has been revoked during the period of such revocation. There are provisions protecting innocent owners and lienors.

22. X died testate in A County. He owned land in B County. Should X's will or an authenticated copy thereof be recorded in the Will Book of B County? Yes, and it should be indexed in the Deed Book also. The second paragraph of V#64-90 now reads, "The personal representative of the testator shall cause a duly certified copy of any will *** so admitted to record (when probated) to be recorded in any county or city wherein there is any real estate of which the testator died seized or which is devised by his will. On or after July 1, 1964, such will shall be indexed in the General Indices of Deeds in such clerk's office in the name of the testator as grantor."

23. CORPORATE MEETINGS. A new section (V#13.1-41.1) reads, "Unless otherwise provided by the articles of incorporation or by-laws of a corporation, any action required by this chapter to be taken at a meeting of the directors, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so to be taken, shall be signed before such action by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote."

24. V#8-654.2 has been amended and now reads in part as follows:
(b) A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, hiking, sightseeing, nor shall a landowner be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on such land or premises for such purposes, except as provided in (d) hereof.
(c) Any landowner who gives permission to another person to hunt, swim, trap, camp, hike, or sightsee upon land or premises does not thereby:
(1) impliedly or expressly represent that the premises are safe for such purposes; or
(2) constitute the person to whom such permission has been granted an invitee to whom a duty of care is owed; or
(3) assume responsibility for or incur liability for any intentional or negligent acts of such person or any other person, except as provided in (d) hereof.
(d) The provisions of this act shall not limit the liability which otherwise exists:
for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or
for injuries suffered in any case where permission to hunt, fish, trap, camp, hike, or sightsee, or for any other legal purpose, was granted for a consideration other than the consideration, if any, paid to such landowner by the State, the federal government or any other governmental agency.
Legislative Changes.

25. INSURANCE. V/38.1-381 requires that all public liability insurance policies insuring the owners of watercraft contain the "omnibus clause" whereby anyone operating the craft with the consent of the owner is also insured just as in the case of automobile liability insurance in Virginia at present.

26. V/54-276.9 (the Good Samaritan statute) now extends its immunity from civil suits to dentists (formerly only doctors of medicine) who in good faith render emergency care to any person injured as the result of a highway accident as a result of any act or omission in rendering such care.

27. V/38.1-262.1 which is new permits the Corporation Commission to approve the written application of any insurer, or rating organization to file and use rating plans which produce premiums in excess of those provided by a filing otherwise applicable for use in writing motor vehicle insurance on classes of risks deemed by the Commission to be substandard.

28. TELEPHONE LANGUAGE. V/18.1-238 has been amended as per underlined words. "If any person shall curse or abuse anyone, or use vulgar, profane, threatening or indecent language over any telephone in this State he shall be guilty of a misdemeanor and may be prosecuted either in the county or city from which he called *** or in which the call is received."

29. INSURANCE; SUBROGATION TO PERSONAL INJURY CLAIMS: At common law there is no subrogation by an insurer to insured's personal injury claims against tort-feasors unless expressly so agreed or provided for by statute. Newly enacted V/38.1-381.2 outlaws such an agreement for subrogation to personal injury claims in contracts of bodily injury liability insurance that may be entered into after January 1, 1965.

30. V/18.1-74-1 makes it a misdemeanor for any two or more persons to agree or associate or to mutually undertake to wilfully and maliciously injure another in his reputation, trade, business or profession by any means whatever, or for the purpose of compelling another to do any act against his will. The next section allows the recovery of treble damages, but the Act expressly exempts employees who are using lawful means to protect their rights.

31. Subsection(c) has been added to V/20-79. This subsection permits a court of record which has decreed with respect to a divorce, alimony, or support and custody of children to transfer the case to a juvenile court, or other appropriate court, for the subsequent enforcement or modification of the decree with reference to alimony, and support and custody of children.
The following summary is a reprint of APPENDIX I (entitled Summary Analyses of Uniform Commercial Code) of the REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL (1963).

ARTICLE 1
GENERAL PROVISIONS

Article 1 contains general provisions applicable to the entire Code. #1-101 provides that it is to be cited as the Uniform Commercial Code. It is to be liberally construed and applied so as to promote its underlying purposes and policies, which are set forth in #1-102(2) as follows:

"(2) Underlying purposes and policies of this Act are
(a) to simplify, clarify and modernize the law governing commercial transactions;
(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

The Code gives the parties to commercial transactions large freedom of contract, providing that the effect of its provisions may be varied by agreement between the parties, except as otherwise provided in the Code, and except that obligations of good faith, diligence, reasonableness, and care may not be disclaimed by agreement, although the parties may by agreement determine the standards, not manifestly unreasonable, by which these obligations are to be measured.

The Code is intended to be an exclusive codification of commercial law, providing within its framework the principles and analogies by which problems not precisely covered by its provisions may be resolved. To the extent, though, that particular provisions of the Code do not displace principles of law and equity, those principles continue to supplement the Code.

#1-105 establishes the territorial application of the Code, but with nationwide adoption this becomes of small significance. The section provides that when a transaction bears a reasonable relation to a state adopting the Code and to another jurisdiction, the parties may agree as to which jurisdiction's law shall govern their rights and duties. In the absence of such an agreement, the Code applies to transactions bearing an appropriate relation to the state adopting it.

Forty-six general definitions applicable throughout the Code, are set forth in #1-201. The term "buyer in ordinary course of business," as distinguished from buyer, is used to refer to a person who in good faith and without knowledge that a sale may be wrongful buys in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. "Creditor" is defined so as to include an assignee for the benefit of creditors or a trustee in a deed of trust to secure creditors. "Good faith" is defined as "honesty in fact in the conduct or transaction concerned." Both notice and value are fully defined. "Security interest" is defined as "an interest in personal property or fixtures which secures payment or performance of an obligation," and replaces the traditional names of security arrangements, such as chattel mortgage, deed of trust, and conditional sale.

#1-203 imposes an obligation of good faith in the performance and enforcement of every contract or duty within the Code.

The Code provides a statute of frauds for commercial transactions involving substantial sums of money and for secured transactions. Except in contracts for the sale of goods and securities and in secured transactions, all of which are covered by specific provisions, the Code requires a signed writing in order to maintain an action or establish a defense where the amount or value of the remedy exceeds $5,000.
ARTICLE 2
SALES

PART I.

Since Virginia has never adopted the Uniform Sales Act its sales law is found primarily in some 200 decisions of the Supreme Court of Appeals. Approximately 70% of these cases were decided before 1930. Many of the decisions are concentrated in particular areas, e.g., products liability. Further, many of the cases involve relatively narrow points of law. As a result, the "law" of these decisions is piece-meal and the precedent value of many of the generalizations made by the court is dubious. Finally, even though five decisions in the 1920's may exist on a particular point it is extremely difficult to predict what the Supreme Court of Appeals would do if the same type of controversy arose in 1963. This difficulty is compounded if there are no decisions in point and the attorney is compelled to advise his client with the hope that the court will follow the generally prevailing view under the Uniform Sales Act. The value, then, of a comprehensive, systematized sales article cannot be over-estimated.

PART 1.

Part 1 delineates the scope of Article 2 and deals with definitions rather than substantive law. Since Article 2 covers transactions in goods, i.e., contracts for the sale of goods, the definition of goods is important. Thus, distinctions between the sale of goods and, say, investment securities or choses in action must be made in Virginia if the UCC is adopted where previously they were relatively unimportant. In the main, the new definitions amplify and vary emphasis rather than change existing Virginia law. In most cases they are undoubtedly consistent with commercial practice and understanding. In one area, however, a change has been made. Under existing Virginia law, oral contracts for the sale of standing timber to be severed by either the buyer or the seller are within the statute of frauds relating to interests in land if the severance is not to occur within a reasonable time. Under §2-107(1), standing timber sold to be severed by the seller at any time is classified as goods rather than an interest in land. However, the change is minimized since the transaction is now within the scope of Article 2 and thus subject to the statute of frauds provision relating to the sale of goods.

PART 2.

In treating the formation and readjustment of contracts for the sale of goods, Article 2 makes the greatest changes in Virginia law.

(a) Form

§2-201 provides, for the first time in Virginia, a statute of frauds for the sale of goods. Consistent with modern trends and the basic philosophy of the UCC, however, the statute sanctions a liberal use of parol evidence to supplement writings which, while inaccurate or incomplete, indicate that a contract for sale has been made. The parol evidence rule of §2-202 permits the introduction of a wide range of extrinsic evidence to explain or supplement written agreements unless the parties intended the writing to be a final and complete expression of the deal. This liberalizes the approach taken by many Virginia cases.

§2-203 changes Virginia law by abolishing the effect of the seal where transactions in goods are involved.

(b) Formation

The UCC appears to be consistent with Virginia law except in the following respects: (1) A firm offer must have consideration to be enforceable in Virginia; (2) Virginia is more restrictive in the manner and medium available for the accept-
ance of offers and probably would deny the existence of a contract where the offer objectively requested performance as an acceptance and the offeree gave a promise to perform; (3) Virginia decisions reject the basic philosophy of #2-207 and make no differentiation between sellers and buyers who are "merchants" and those who are not. It should be noted, however, that Virginia and the UCC both espouse a liberal attitude toward the resolution of indefiniteness in agreements by resort to external, objective standards, i.e. what would be reasonable in the business context, and the use of prior dealings and trade usage to achieve a practical construction of ambiguous terms.

(c) Readjustment

#2-209 conflicts with Virginia law in two respects. First, the Code abolishes the need for consideration in modifying agreements. Second, the UCC modifies Virginia law by stating that a signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded. Virginia permits an oral rescission of the written stipulation.

#2-210 appears to be consistent with existing Virginia law where the transfer of contracts is involved, although the UCC amplifies and more clearly defines the standards to be applied.

Part 3.

Part 3 concerns the general obligation and construction of contracts. In 6 of the 11 Sections from #2-301 through #2-311 there are no Virginia decisions or statutes on point. Of these, #2-302, dealing with unconscionable contracts or clauses, and #2-305, dealing with open price terms, probably make the greatest changes in the traditional approach to contracts while the other four are generally consistent with the Uniform Sales Act. The Virginia decisions are generally consistent with the remaining five sections.

(a) Warranties

The UCC warranty Sections are #2-312 through #2-318. Virginia decisions have recognized and granted relief for breaches of express warranties and implied warranties of merchantability and fitness for a particular purpose. These decisions are consistent with UCC #2-313 through 2-315, although the Code is more detailed and comprehensive in its treatment of the problem. Since Virginia has never had a implied warranty of title case, #2-311 provides new rules for this problem. Virginia cases are generally in accord with the UCC on the problems of contractual exclusion or modification of statutory warranties, #2-316, and the cumulation and conflict of several warranties express or implied contained in the same contract, #2-317. However, the UCC is more precise in both of these areas and contain express safeguards to insure that a limitation or exclusion of implied warranties be in writing, conspicuous and contain specific language of disclaimer. In summary, the UCC works a general improvement in the statutory treatment of express and implied warranties yet is consistent with the basic warranty policy reflected in Virginia cases.

#2-318 effects a limited abolition of the privity defense in breach of warranty actions by specified users of goods against remote manufacturers or sellers. Virginia, however, has recently enacted legislation which virtually abolishes the defense of privity. The Virginia statute reflects the increasing tendency of modern decisions and we recommend its substitution for this section. (Note: This recommendation has been followed)

(b) Delivery Terms

#2-319 through 2-325 prescribe and define certain terms commonly used in domestic and international sales transactions. #2-319 states that "F.O.B." is a delivery term and seems to change some Virginia decisions which suggested that "F.O.B."
Special Sales Situations

 §§2-320 through 2-328 cover sales by consignment, approval, sale or return and auction. The UCC carefully defines the incidents and legal effects of these transactions, giving special emphasis to the rights of the buyer's creditors to goods of the seller in the buyer's possession. Virginia has no case law in this area except those decisions which seem consistent with the UCC's position on when a buyer on approval has accepted goods in his possession. The effect of the UCC on the Virginia Trader's Act, Code, §55-152, is discussed in the Virginia annotations to §2-326. Except for one anomaly upon which there is no Virginia rule, the sale by auction provisions of the UCC are consistent with Virginia law.

Part 4.

This part contains three important Sections on title, creditors and good faith purchasers. §§2-401 is generally consistent with Virginia decisions and the Uniform Sales Act as to when title to goods passes from seller to buyer. As under previous law, the parties are free to agree when title passes but if the contract is silent a series of statutory rules govern the issue. These, in turn, depend upon whether the contract authorizes the seller to ship the goods or whether the goods are to be delivered without being moved. Unlike previous Virginia and Uniform Sales Act law, however, the importance of title under the UCC is minimized. Passage of title is immaterial to such questions as risk of loss, the buyer's right to seek specific performance and the seller's ability to sue the buyer for the price of goods. Title will still be important in the determination of problems outside the scope of the Code, such as public regulation and creditors rights.

The rights of the seller's unsecured creditors and the buyer to goods still in the seller's possession are set forth in §§2-402. If the buyer has obtained a special property interest in the goods by identification (see §§2-501), the creditor who seeks to attach the goods is subject to the buyer's right to the specific goods as defined by §§2-503 (seller's insolvency) and §§2-715 (specific performance and replevin under specified circumstances). There is little or no Virginia law on this problem. If the buyer has no rights to specific goods by identification, the creditor may treat the sale or identification and retention of possession by the seller as void under any applicable rule of law in Virginia unless the seller is a merchant who retained possession in good faith and in the course of trade for a commercially reasonable time. To the extent that the seller has not properly retained possession, the existing Virginia law on fraudulent transfers would prevail. But if the seller has properly retained possession, a more difficult problem is presented. Would this prevail over Virginia Code §§11-1, 55-95 and 55-96, which require the public recordation of bills of sale when possession is retained? We believe that it would, and to eliminate possible ambiguity, recommend that §§11-1, 55-95 and 55-96 be amended to exclude from their coverage retentions of possession by sellers which are otherwise proper under §§2-402. (This has been done.)

§§2-403 both clarifies and expands the rights of good faith purchasers for value of goods in which third persons other than the seller have legitimate interests. The clarification occurs in the statement of the general rule that a seller with voidable title may pass good title to a third person and a listing of four controversial situations which the Code classifies as voidable rather than void transactions. The expansion comes in the power of a merchant to transfer good title in goods entrusted to him to a buyer in the ordinary course of business even though the merchant has no title whatever. This latter expansion clearly changes Virginia law.
Part 5.

Part 5 concerns performance of the contract of sale. #2-501 covers identification of goods to the contract, the effect of which is to create in the buyer both an insurable and a special property interest in the goods. Under Virginia cases, identification is usually called appropriation and coupled with a conclusion that the parties intended title to pass. Since the UCC separates the special property interest created by identification from the passage of title, this effects a change in theory under Virginia law. But whether the buyer obtains title to goods by appropriation in Virginia or a special property interest by identification under the UCC, the validity of his claim to specific goods in the seller's possession would seem to be substantially the same. Although title will give the buyer greater protection than a "special" property interest against the seller's unsecured creditors, the parties are free to agree that title shall pass upon identification of goods to the contract of sale.

The UCC carefully defines the manner of the seller's tender of delivery, #2-503, and his duties when the contract requires a shipment of goods to the buyer, #2-504. These sections, though more detailed, are generally consistent with the few Virginia cases on point. While the buyer's duty to pay for the goods is conditioned upon a tender of delivery by the seller, #2-507, the seller is given a limited power to cure a defective tender under #2-508. This latter Section expands the "cure" rights provided by Virginia case law. On the other hand, while the buyer's tender of payment is a condition to the seller's duty to tender and complete any delivery, unless the contract otherwise provides the buyer may inspect the goods at the place of delivery before making a tender of payment. #2-511 and 2-513. These rules appear to be consistent with Virginia law. Of course, the tender of payment is excused in a credit transaction and the right to inspect before payment does not exist if the contract, for example, requires payment against documents of title. #2-514 and 2-515 provide new rules for the delivery of documents of title upon acceptance of a draft and the preserving of evidence of goods in dispute.

The risk of loss provisions of Part 5 represent another area of theoretical change made by the UCC. Under Virginia law and the Uniform Sales Act, risk of loss followed passage of title. While in many cases title did not pass until the goods had been delivered to the buyer it was not uncommon for title to pass either by express agreement or "appropriation" while the goods were still in the seller's possession. Thus, risk of loss would be on the buyer even though the seller was in possession. #2-509 divorces risk of loss from passage of title. In essence, risk of loss follows the transfer of possession by the seller to the buyer or a carrier if the sale is F.O.B. Delivery of possession may often coincide with the passage of title, thus preserving similar results if not reasoning. However, in cases where title has passed before delivery of possession, the risk of loss remains with the seller unless he is a non-merchant who is not obligated to ship the goods by carrier and tenders delivery to the buyer. #2-509(b)(1). Different rules apply when the goods sold are in the possession of a bailee and these are generally consistent with Virginia law.

A basic reason for this change is the judgment that a merchant seller will or should have insurance to cover the risk of loss to goods in his possession. As long as he retains possession it is commercially feasible to place the risk on him. In fact, the risk of loss remains with the seller who ships F.O.B. destination until the carrier tenders delivery of conforming goods to the buyer, or where the buyer accepts non-conforming goods and later properly revokes his acceptance. However, if the seller identifies conforming goods to the contract and the buyer then breaches his contract before the risk passes to him the seller may treat the risk of loss as resting on the buyer to the extent of any deficiency in insurance coverage. #2-510. This is a new concept which has no counterpart in existing Virginia sales law.
Part 6.

Part 6 deals with the general problems of breach, repudiation and excuse. Upon tender of goods by the seller, the buyer, under traditional sales law, has a right to inspect the goods. If they fail to conform in any respect §2-601 gives the buyer an option to accept or reject the whole or accept any commercial unit or units and reject the rest. A decision to reject all or part is closely regulated by §§2-602 through 2-605 and their basic requirements of particularized notice to the seller. While the remedy of rejection is recognized in Virginia, the UCC Sections defining procedures are new. It is not clear whether Virginia would permit rejection for any failure to conform and there appears to be some limitation upon the buyer's ability to accept part of the non-conforming goods without waiving objections to the rest.

If a buyer knowingly accepts non-conforming goods under the UCC, his rejection remedy is ended. Under both §2-607 and the law of Virginia, however, acceptance does not necessarily preclude other remedies for breach of warranty, provided prompt notice is given the seller. The UCC imposes stricter notice requirements on the buyer than are seemingly required by Virginia decisions. It appears that under both the UCC and Virginia law a buyer who accepts without discovery of defects after a reasonable inspection may later "revoke" his acceptance and reject the goods. §2-608.

The UCC provides additional grounds for revocation of acceptance, specified as the time in which the revocation must occur and requires prompt notice to the seller.

A buyer's power to reject tendered deliveries or rescind in an installment contract is limited to cases where the non-conformity substantially impairs the value of the installment or the entire contract. §2-612. This is consistent with the theory of material breach in general contract law. If the buyer may rescind the entire contract, however, there is a risk that he will reinstate it by certain conduct specified in §2-612(3). This "waiver" idea is generally consistent with Virginia law, although a few of the cases raise interesting factual variations.

§2-609 gives either the seller or the buyer a right to demand adequate assurance of performance when reasonable grounds for insecurity arise with regard to performance of the other. There is no comparable Virginia rule. The UCC also has provisions on anticipatory repudiation and the retraction of repudiations which are consistent with existing Virginia case law. §§2-613 through 2-616 have no counterpart in existing Virginia law. §2-615, by defining situations where a performance failure is excused by the failure of conditions, apparently liberalizes the excuses for non-performance under Virginia law.

Part 7.

This part carefully organizes and details the various remedies possessed by sellers and buyers of goods upon breach of contract. For the most part, these basic remedies are recognized in Virginia sales law. The UCC, however, makes changes in the following important respects: (1) under the Code, a seller delivering goods on credit to an insolvent buyer may reclaim the goods within 10 days of their receipt, §2-702(2); (2) a seller under the UCC may recover the price of goods sold only when the buyer has accepted them and in two other specified circumstances, §2-709, while in Virginia an action for the price depends upon the passage of title; (3), the UCC, in a limited context, permits the buyer to replevin goods in the seller's possession although Virginia has abolished replevin as a form of action; (4) the UCC, in providing a four-year statute of limitations subject to a reduction to one year by agreement, §2-725, reduced the Virginia limitation from 10 years and introduces some confusion as to whether, under Virginia law, an agreement to reduce the statute of limitations is enforceable.
COMMERCIAL PAPER

I

General Matters

It must be said at the start that Article 3 will not apply to some common and commercially important instruments covered by the present statute. #3-103 says explicitly that the Article does not apply to investment securities. These are defined in Article 8, #8-101, to include any instrument issued in bearer form, of a type commonly dealt in on securities markets or commonly recognized as a medium for investment, which is one of a class or series, and evidences an obligation of the issuer. So under the Code most corporate bonds and many mortgage bonds would be controlled by Article 8 and not by the rules relating to negotiable paper. The purpose is to free such instruments from the arbitrary rules as to form specified for negotiable paper and the result is to make applicable to them the same rules as are applicable to stock certificates.

On the other hand Article 3 is made applicable by #3-805 to the anomalous instruments which meet all tests of negotiability except that they are not payable to order or bearer. All the rules applicable to negotiable paper will apply to these instruments except that no holder can occupy the position of a holder in due course. Anyone signing such an instrument assumes all the liabilities of maker, drawer, acceptor or indorser as the case may be, and not common law obligations. And the rules applicable to transfer of such instruments will be the rules of negotiation rather than those of common law assignment.

II

Requirements of Form

With respect to the form an instrument must take to be negotiable, Article 3 liberalizes the present law in some respects and settles some open questions. For instance, it allows provisions for acceleration on any ground, including the holder's insecurity, and specifically recognizes the validity of certain extension provisions(#3-109); it clarifies the negotiable status of instruments antedated or postdated (#3-114); it makes clear the effect of outside agreements(3-119); it allows an exclusion of individual liability in the case of partnerships, unincorporated associations, trusts or estates, provided the entire assets are available for payment(#3-105). But in one important respect Article 3 is more restrictive than present law. Virginia Code, #6-357, prohibits the inclusion in a negotiable instrument of promises to do an act in addition to the payment of money, with stated exceptions; but allows an option in the holder to take something in lieu of money. Article 3 eliminates the possibility of such option and prohibits(#3-104)not only "promises" for acts in addition to the payment of money but "obligations and powers" given by maker or drawer. The list of exceptions stated in #3-112 is reasonably broad, particularly the allowance of a promise to maintain or protect collateral. However, doubt is cast on the possibility of inserting in negotiable paper rights to inspect the maker's books, obligations by maker to refrain from certain business practices, and so on.

III

Holder in Due Course

A. Definition

Under Article 3 as under existing law the fundamental requirement for holder in due course status is good faith purchase for value, so at a glance the definition seems not materially altered. Yet there are substantial changes. For example, "value" is no longer defined as any consideration sufficient to support a simple contract; under #3-303 one takes an instrument for value to the extent that the
agreed consideration has been performed. This is more a change of language than
change in result, for UCC, §3-102, and Virginia Code, §6-406, now limit one's holder in
due course status to the extent value has been paid before notice of some defect or
infirmitiy.

Other changes, however, will produce a difference in legal result. A purchaser
will no longer be denied holder in due course status merely by purchasing after
maturity, unless he has notice of the fact. This will clear up some troublesome
questions in the case of paper whose maturity has been accelerated, or on which de-
mand has been made. Similarly, an honest purchaser will not be condemned because
he buys an instrument incomplete or irregular on its face, provided it is not so
obviously so as to call in question its validity or terms.

In these two respects the definition is altered in ways making it easier for a
holder to become a holder in due course. Yet in another and extremely crucial
respect Article 3 may have altered present law to the disadvantage of the honest
purchaser. Nothing is clearer under the present law than the rule that a holder is
not denied holder in due course rights because of mere negligence in his purchase.
He falls from grace only if he acts in bad faith, buys when he is suspicious.
Article 3, §3-302 defines a holder in due course as one who has bought "without
notice ... of any defense against or claim to ..." the instrument. Under §3-304
he has such notice if he has notice that the obligation of any party is voidable in
whole or part. And under Article 1, §1-201(25), he has notice of such fact when
"from ail the facts and circumstances known to him at the time in question (the time
of purchase) he has reason to know that it exists." It seems clear that the test
under the Code is not whether one buys with suspicion, but with reason to know—
that is, negligently. This is a most unfortunate, and perhaps unintentional, return
to the position held by the English courts for a very brief time and now repudiated
by them and by the Negotiable Instruments Law. New York has amended the UCC to
return to the concept of the NIL, and we recommend a similar amendment.
(This recommendation had been flouned)

§3-302 incorporates into the statute itself the preferred case law rule that the
payee may be a holder in due course if he meets the usual tests. §3-201 continues
the rule that a person who may not himself qualify as a holder in due course may en-
joy the status vicariously by purchase from one. Present law denies this right
only to a person who has been party to some fraud or illegality affecting the instru-
ment. §3-201 denies the privilege also to a person who, while holding the instru-
ment, knew of some defense or claim against it and sells and later reacquires it.

B. Proof

As under present law one suing on negotiable paper will have an initial burden of
showing he owns the instrument. This often involves the proof of signatures, a
point as to which plaintiff will have the burden of proof. But he will no longer
(as under Virginia Code §8-111) have to allege their genuineness in his pleading.
Under Article 3, §3-307, they are admitted unless denied in defendant's pleading.
And even though so challenged, signatures will be presumed genuine.

Under present law, once plaintiff has by proof of signatures or otherwise proved
himself a holder he is by statute declared to be presumptively a holder in due
course, which presumption the defendant can rebut only by showing those particular
defenses defined by the statutes as "defects of title." Plaintiff does not have to
sustain the burden of proof on the issue of his being a holder in due course until
such technical defense is shown; rather defendant is under the burden of proof.
Article 3 makes a significant change here. There is no stated presumption that
plaintiff holder is a holder in due course. But plaintiff is required to prove him-
self such whenever any defense is proved by defendant. In other words, the unstated
presumption is defeated by proof of any defense, not as at present by some technical
defenses only. Hence under the Code the plaintiff will have the burden of proving
himself a holder in due course much more frequently than he now does.
G. Rights and Defenses

These are in general the same as under existing law. But in #3-305 it is flatly stated that a holder in due course takes the instrument free from "all claims to it on the part of a ny person." This would include claim made by an infant, and Changes Virginia law.

As under existing law even a holder in due course will be subject to defenses of infancy, incapacity or illegality resulting in voidness, fraud in the factum and discharge(#3-305); will be able to enforce completed instruments as filled up regardless of breach of authority, and altered instruments according to their original tenor(#3-407). But it will no longer be a defense against a holder in due course that the instrument was incomplete and not delivered. (Note: Under UCC 3-305 and 3-602 a holder in due course takes subject to discharge only if he has notice thereof, or, it arises independently of the UCC such IV as a discharge in bankruptcy)

NEGOTIATION

As under present law, negotiation under the Code will be effected by delivery alone in some cases or by indorsement plus delivery in others. And the result of negotiation will be to constitute the transferee a holder (#3-202). To be effective an indorsement must be on the instrument or on a paper so firmly attached as to become a part of it. This probably changes Virginia law.

But contrary to the present rule, paper made to bearer on its face will not remain such and therefore always negotiable by delivery alone. Under Article 3 whenever any negotiable instrument receives a special indorsement it can be further negotiated only by the signature of the special indorsee(#3-204).

Furthermore, under Article 3 a restrictive indorsement no longer destroys the negotiability of the instrument. It remains negotiable and a future taker may become a holder in due course of it if he pays value consistently with the indorsement. If the restrictive indorsement is of the type which creates a trust rather than an agency even this requirement of payment of value consistently with the indorsement applies only to the first taker under the indorsement, i.e., the trustee. Purchasers from the trustee and later holders are in no way affected by a restrictive indorsement of this type.

In the case of restrictive indorsements of the agency type, calling for collection or deposit, the situation is normally one where the instrument is put into bank collection channels. If that happens, the provisions of Article 4 on Bank Collections come into operation and by explicit provision control the provisions of Article 3.

V.

LIABILITY OF PARTIES

A. In General

Article 3, #3-802, is a new provision which makes it clear (2) that while a negotiable instrument is outstanding but not due parties to it are not liable on any underlying obligation for which it was given, (b) that when the instrument is due the holder may sue on it or on the underlying obligation, and (c) that discharge of a party on an instrument discharges him also on the underlying obligation.

Article 3, #803, gives a party sued on an instrument a right to notify any party liable to him on the instrument, and if the notice states that that party may come in and defend and he does not do so he is bound by factual determinations.
The Code makes a change in the law as to liability of parties who sign incomplete instruments. They are now liable to holders in due course on the instrument as completed, but not liable to a non-holder in due course. Under §3-407, they will be liable to non-holders in due course according to the authority to complete originally given unless the filling in is done with fraudulent purpose.

This same section also effects a substantial change in the law applicable where the instrument is altered by means other than unauthorized completion. Under it the only alteration that may avoid an instrument is one made by the holder, and not as now by a holder or a stranger. Again, unless the alteration is made with fraudulent purpose, even a non-holder in due course may recover, according to the original tenor of the instrument; whereas under present law he recovers nothing.

As pointed out above, against a holder in due course a defendant may no longer successfully defend on the ground the instrument was both incomplete and not delivered.

Nor may one any longer defend on the ground that a necessary signature has been forged, in cases where an imposter has used the mails to effect his scheme rather than dealing face to face. §3-405 treats the two cases alike. It does not treat such instruments as bearer paper, but provides that an indorsement by any person in name of the named payee is effective. This approach is also taken in the Section as to paper dishonesty made or drawn to a payee who is fictitious, or not intended to have any interest in the instrument, whereas present law treats these as cases of bearer paper needing no indorsement.

Under §3-306, a defendant may not defend on the ground that some party other than the plaintiff has a claim to the instrument unless such third party claim is based on a situation of theft or rights under a restrictive indorsement. This settles a point where the Virginia law has been undecided and there has been conflict in other jurisdictions. On the other hand, contrary to present law, a party notified of a third party claim may nevertheless safely pay the presenting holder, unless the third party claim is based on theft or rights under a restrictive indorsement (§3-603).

B. Liability of Agent or Representative

In accord with present law a person signing as agent or in some representative capacity is personally liable unless authorized in fact to sign; and is furthermore liable to anyone other than the party immediately dealt with unless the instrument both names the person represented and shows the signature was in a representative capacity. However, when sued by his immediate party the agent may defend against personal liability if the instrument shows either of these facts, being allowed to prove the other by parol (§3-403). As to this last point the Section settles a matter as to which Virginia law had not been clear.

C. Indorsers and Drawers

Article 3 makes no change in the basic rule that, absent waiver, the promise to pay of indorser and drawer is conditioned on proper presentment, notice of dishonor, and in some cases protest. However, contrary to present law, one who indorses after maturity is not entitled to these steps (§3-501(1)). Furthermore, whereas the present statute states that the drawer of a check is discharged only to the extent of his loss if notice is not given, §3-502(1)(b) provides that if either proper presentment is not made or notice given and the bank becomes insolvent, such drawer may discharge his liability by assigning to the holder his rights against the bank, but is not otherwise discharged.

Protest is no longer required of instruments drawn in one state and payable in another, but only of instruments drawn or payable outside the United States and its territories (§3-501).
Presentment for payment of a check, to hold an indorser, must be within seven days after his indorsement, rather than within, roughly, the one day accorded under present law. With respect to the liability of the drawer presentment must be within thirty days of date or issue (#3-503). Presentment by mail or through a clearing house is expressly sanctioned. And if presentment is at a proper place and neither the party to accept or pay nor his agent is present, presentment is excused (#3-50h). This represents a considerable relaxation in favor of the holder, who will now not have to prove grounds of excuse otherwise.

Notice of dishonor is no longer required within one day. Three days are allowed for this purpose (#3-508). And whereas at present effective notice can be given only by the holder of a dishonored instrument or some one who has received notice from him or through him, this same section provides that notice may be given by the holder, a party who has received notice, or any other party who can be compelled to pay the instrument—a considerable liberalization.

Under #3-510 not only a certificate of protest but a bank stamp or ledger entry indicating dishonor are admissible as evidence and create a presumption of dishonor and proper notice.

The liability of indorsers on warranty are rephrased but apparently not changed.

D. Banks and other Drawees

The rule of Price v. Neal is codified in #3-417(1) and 3-418; but the method of handling the problems is new. The approach taken is, under #3-418, that payment or acceptance by drawee is final, unless it has a right of recovery (#3-417(a)). This latter Section provides that anyone who obtains payment or acceptance (and any prior transferor) warrants to the person accepting or paying (a) title; (b) lack of knowledge of forgery of the drawer's signature in some circumstances, and (c) absence of material alteration in some cases. The rules are stated in complicated fashion, but the results under them should be in accord with existing law. For instance a bank paying on a forged indorsement is liable to the true owner under the provision of #3-419 that it is by this action a converter; but it can recover from the person paid, even a holder in due course, because of the breach of the warranty of title. Where a bank is involved reference should also be made, of course, to Article 4, in particular to #4-207.

E. Discharge

The changes here are minor. There is a change in method of approach; the present law focusing on discharge of the instrument and the consequent results thereof, whereas the Code focuses on discharge of the parties. But the results will be about the same under the Code as under present law.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Article 4 codifies and develops present law relating to bank deposits and collections as found in the following: Negotiable Instruments Law, adopted in all the states; The American Bankers Association's Bank Collection Code, adopted in eighteen states but not in Virginia; deferred posting statutes, adopted in most states; and miscellaneous statutes relating to stop payment orders, limitations on liability for payment of forged and altered checks, and similar matters. The case law developing rules of contract, agency, and trusts as applied to bank deposits and collections is codified in the Article.
While the entire Code seeks to retain flexibility in the development of commercial law, this is particularly true of Article 4. The specific provision of #4-103(1) expressly embodies this concept of flexibility. It authorizes, subject to concepts of good faith and ordinary care, variation by agreement of the provisions of the Article.

Some knowledge of banking practices is necessary to a full understanding of this Article, which is relatively complex. The rules laid down are sufficiently broad to take account of different operating procedures as between different banks, as well as the different procedures a particular bank applies to different types of items, while retaining the opportunity for future changes in internal operating procedures.

Part 1: General Provisions and Definitions

Under #4-102 the law of the place where the bank is located governs its liability for action or nonaction as to any item handled by it for purposes of presentment, payment, or collection. A branch or separate office of a bank, under #4-106, is considered a separate bank for most purposes.

#4-107 authorizes a bank to fix two P.M. or later as a cut-off hour for the handling of money, and items and the making of entries in its books. The time limits set forth in the Code may be extended, unless otherwise instructed, by a collecting bank in a good faith effort to secure payment, for a period of not in excess of an additional banking day. Delay may also be excused if caused by circumstances beyond the control of the bank.

Part 2: Collection of Items: Depository and Collecting Banks

The considerably litigated question of whether a bank takes an item as purchaser or as agent for collection is settled under the Code in #4-201 in favor of the view that the bank always takes "for collection," unless a contrary intent clearly appears. The Virginia cases have considered the form of the indorsement, and the entry made on a deposit slip by the original owner of a draft, to be of large significance in determining whether a bank was a purchaser of the draft or only an agent for collection. Under the Code the form of the indorsement is immaterial on this question. However, Virginia is consistent with the Code approach in that no particular significance is placed on the form of indorsement placed on the draft by the depository bank itself, or to a right of recourse by the depository bank against the drawer of the draft.

#4-204 authorizes direct forwarding to a payor bank for collection; #4-202 requires the collecting bank to use due diligence in other respects in the collection of the item. Under #4-205 a depository bank may supply a missing indorsement, and #4-206 authorizes transfers between banks by any agreed method that identifies the transferor bank.

The problem of payment and acceptance of forged and altered items is dealt with in #4-207, as in Article 3, in terms of warranties made by the customer of the bank and by the collecting bank on transfer and presentment of items.

#4-208 gives a collecting bank a security interest in items, the accompanying documents, and the proceeds. It recognizes that a bank has a security interest in an item or its proceeds to the extent that bank credit given on the basis of the item has been withdrawn. This section of the Code recognizes that a bank may have a security interest in an item, and so have given value, if the credit is available for withdrawal as of right, whether or not drawn upon.

The Code sets forth in detail the media of remittance that may be used in bank collections, expressly recognizes rights of charge-back, and undertakes to define when an item is finally paid.
set forth preference rules to be applied in case a bank in the course of collection becomes insolvent.

Part 3: Collection of Items: Payor Banks

The deferred posting provisions of the Code, set forth in §4-301, carry out the same basic purposes as the Virginia statutes on the subject. While the Code uses different terminology, there are no apparent significant differences.

§4-303 contains provisions setting forth when items are subject to stop payment orders, legal process, or setoff, and also provides the order in which items are to be charged or certified.

Part 4: Relationship Between Payor Bank and its Customer

The Code in §4-401 allows a bank to charge a customer’s account according to the original tenor of an altered item.

The Code recognizes the right of a customer to stop payment on any item payable from his account, if the order is received by the bank at such time and in such manner as to afford the bank a reasonable opportunity to act upon it. Oral orders are binding only for fourteen calendar days, unless confirmed in writing within that period. Written orders are effective only for six months, unless renewed in writing.

§4-405 provides that until a bank has knowledge of the death or an adjudication of incompetency of a customer and a reasonable opportunity to act on it, the authority of the bank to accept, pay, or collect his items is not revoked. Even with knowledge of death, the bank for ten days after the date of death may pay or certify checks drawn on or prior to the date of death, although it is not intended to prevent the personal representative from recovering the payment. A person claiming an interest in the account may, however, order the bank to stop payment.

§4-406 of the Code recognizes that a depositor owes a bank the duty of examining statements of account and cancelled checks and to report unauthorized withdrawals from his account. It draws distinctions between the customer’s duty as regards his own forged signature and altered items, and his duty as regards forged endorsements, where he cannot be expected to know the signatures of the indorsers. The Code is somewhat broader in its coverage, as regards items, signatures, and types of alterations, than the Virginia statutes. The statutes of limitations in the Code are longer than those presently in effect in Virginia.

§4-407 expressly recognizes that a payor bank has a right of subrogation when it has made an improper payment.


This subject has not generally been covered by statute, and there is no relevant law in Virginia

ARTICLE 5

LETTERS OF CREDIT

Article 5 undertakes a partial codification of the law relating to letters of credit. The letter of credit business has a strong international flavor, and has generally been carried out in accordance with the Uniform Customs and Practice for Commercial Documentary Credits, adopted in 1951 by the 13th Congress of the International Chamber of Commerce. So far as the United States is concerned, the letter of credit business has been concentrated in New York. As a result, the only consistent and, anywhere near, comprehensive body of American law relating to letters of credit has been developed in the decisions of the New York courts and the Federal Court of Appeals for the Second Circuit.
Virginia has no statute law and only one case arising out of a transaction that the Supreme Court of Appeals of Virginia said involved a letter of credit. One of the greatest services Article 5 provides for Virginia is to establish guideposts on this matter of identity.

Article 5 gives everyone ready access to some of the open secrets regarding letters of credit, already available in publications of the International Chamber of Commerce, the New York decisions, and other sources.

ARTICLE 6

BULK SALES

To understand this Article, one must know the general purpose of bulk sales legislation. Assume that a merchant has a stock of inventory which he holds for sale in the ordinary course of business. Assume further that a creditor, relying on that stock of inventory and the income that it will generate, extends unsecured credit to the merchant. So long as the merchant sells inventory in the ordinary course of business the unsecured creditor has a good chance of being paid. But if the merchant sells all or substantially all of that inventory for value to a third person not in the ordinary course of business, the risk of nonpayment is materially increased. In one deal the creditor loses a large part of the merchant's assets upon which a levy might be made. Further, even if the conveyance amounts to a fraud on creditors, most states protect the third party purchaser unless he had notice of his seller's fraudulent intent. Thus, while a creditor might set aside a proposed conveyance by the merchant which is in fraud of creditors, he cannot levy on the inventory once it has been delivered to a purchaser for value without notice. The creditor's best security, therefore, is the proceeds of the sale which have been received by the merchant seller. But if those proceeds are inadequate or have been dissipated before the creditor is informed of the transaction, his rights are seriously impaired.

The Virginia Bulk Sales Act, Virginia Code §§55-83 to 86, and Article 6 of the UCC approach these problems in substantially the same way. Under both statutes, specified bulk transfers of certain quantities of inventory or equipment not in the transferor's usual or ordinary course of business are ineffective against creditors unless three basic conditions are met: (1) the parties prepare a schedule of the property involved which is held by the transferee for six months after the transfer and made available for inspection by the transferee's creditors; (2) the transferor prepares at the transferee's demand a sworn list of creditors which, again, is held by the transferee for six months, subject to inspection; (3) the transferee gives notice of the proposed transfer to the transferor's creditors at least 10 days before taking possession of the goods. Since the creditor has notice before the transfer occurs, he may utilize available state remedies to protect his interest, i.e. prevent the transfer as a fraud on creditors, impound the proceeds when received by the transferor or negotiate a consensual payment arrangement with the transferor.

There are differences of a relatively minor nature between the Virginia Bulk Sales Act and Article 6 of the UCC. For example, the Virginia statute applies to bulk transfers of "any part" of specified goods while Article 6 applies to bulk transfers of a "major part" of the seller's inventory. Similarly, the Virginia Act is more readily applied to bulk transfers of fixtures or equipment "pertaining" to a stock inventory than is Article 6.

On the other hand, Article 6 is more precise than the Virginia Bulk Sales Act in defining what property is subject to the act and in listing eight specific exceptions to the act's literal coverage. Further, Article 6 requires more information to be contained on the schedule of property, list of creditors and notice to creditors than does Virginia. Additional precision is obtained in Article 6 by prescribing which creditors can object to defective transfers, which creditors are entitled to notice, the legal effect of defects in the list of creditors prepared by the transferor and
the rights of third persons who, without notice, purchase inventory from the immediate transferee in a defective bulk sales transfer. These questions have been left to the courts in Virginia. Article 6 also adopts a six month statute of limitations for all bulk transfers. Finally, Article 6 contains a special provision for bulk sales by auction which is not found in Virginia.

In summary, the purpose of Article 6 is to simplify and make uniform the law of bulk sales. The differences between Article 6 and the Virginia Bulk Sales Act are insubstantial.

Article 6 provides an optional "Application of Proceeds" section which may be adopted or rejected without serious damage to the principle of uniformity. This section imposes upon the transferee a duty to "assure that such consideration (i.e., the sale price) is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor...or filed in writing in the place stated in the notice...within thirty days after the mailing of such notice."

Only five of the first seventeen states to adopt the Uniform Commercial Code have enacted the Application of Proceeds section. These states are Alaska, Kentucky, New Jersey, Pennsylvania and Oklahoma. In general, the reasons for rejection of the optional provisions reflect a feeling that notice coupled with independent creditor remedies in particular states is adequate protection for the unsecured creditor. We concur in this view and recommend that the optional provisions be omitted.

ARTICLE 7
WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

Article 7 is a consolidation and revision of the Uniform Warehouse Receipts Act, the Uniform Bills of Lading Act, and the provisions of the Uniform Sales Act relating to the negotiation of documents of title. The criminal provisions of the Warehouse Receipts Act and the Bills of Lading Act are omitted as being inappropriate to a Commercial Code. The Article does not undertake to define the tort liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care.

The Uniform Warehouse Receipts Act was promulgated in 1906 and adopted by Virginia in 1908. Neither the Uniform Bills of Lading Act nor the Uniform Sales Act has been adopted by Virginia.

Article 7 makes as few innovations in existing law as any of the articles of the Code.

Part 1: General

This part contains general definitions and statements regarding the difference between a negotiable and nonnegotiable document of title, which are consistent with present law, to the extent that these subjects are now defined.


The formal requirements of the Uniform Warehouse Receipts Act are continued in #7-202.

#7-201 defines the warehouseman's duty of care and provides how his liability can be limited by contract. The warehouseman's lien is spelled out in detail in #7-209, and the method of enforcement in #7-210. Under the UCC the warehouseman converts the goods only if he willfully fails to comply with the requirements set forth.

The provisions of this part provide new statutory law in Virginia consistent with the Uniform and the Federal Bills of Lading Acts.

17-309 provides that a carrier "must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances." This section expressly provides that the Code does not repeal any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence. As a result, Code 1950, §56-119, which invalidates contractual provisions purporting to exempt transportation companies from their liability as common carriers, is continued in effect. This section permits the carrier to limit the amount of damages on the basis of declared values. The section authorizes the carriers to make reasonable provisions as to the time and manner of presenting claims and instituting actions.

Part 4: Warehouse Receipts and Bill of Lading: General Obligations

This part continues and expands the provisions of the earlier uniform acts. 17-404 is in accord with Virginia law.

Omission of the optional language in 17-403(1)(b) will leave unchanged the Virginia rule as regards the burden of proof in fixing the liability of a warehouseman, and this is recommended.

Part 5: Warehouse Receipts and Bills of Lading: Negotiation and Transfer

Under §§140 and 47 of the Uniform Warehouse Receipts Act, as now in effect in Virginia, a warehouse receipt can only be negotiated by the owner or by a person to whom the possession or custody of the receipt has been entrusted by the owner, so that a person who obtained the receipt by trespass or by finding could not negotiate the document. The UCC follows the 1922 amendments proposed by the National Conference of Commissioners on Uniform State Laws under which a person within the tenor of the document and in possession, "however such possession may have been acquired," could negotiate the document. This changes Virginia law.

In other respects this part continues and develops the prior law of the uniform acts.


17-603 excuses a bailee from delivery when conflicting claims are made upon him until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel the claimants to interplead.

ARTICLE 8

INVESTMENT SECURITIES

This Article replaces the Uniform Negotiable Instruments Law, adopted in Virginia in 1897, to the extent that act covered bonds used as investment securities. It replaces the Uniform Stock Transfer Act, promulgated in 1909, adopted in Virginia in 1921, and eventually by all the states. This Article does not replace, but by 10-104 is made subject, in case of inconsistency, to the Uniform Act for the Simplification of Fiduciary Security Transfers, promulgated in 1958 and adopted in Virginia in 1960.

This Article uses a functional rather than a formal definition of a security. 8-102 defines a security as an instrument in bearer or registered form which is of a type "commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium of investment."
general, then, the Article covers bearer bonds, previously covered by the Negotiable Instruments Law; certificates of stock, previously covered by the Stock Transfer Act; and registered bonds and additional types of investment paper, not covered by any statutes.

The Article is not a Corporation Code nor a Blue Sky Law, statutes covering these subjects being unaffected.

Part 1: General Matters

This part provides definitions, establishes rules for governing the effect of an over-issue, declares that securities are negotiable, and outlines the rights and duties of the parties in a sale of securities. #8-103 provides that a lien in favor of an issuer is valid against a purchaser only if the right of the issuer to such a lien is noted conspicuously on the security.

Part 2: Issue--Issuer

The term "issuer" is comprehensively defined in #8-201 for the purpose of this Article only. #8-202 set forth the issuer's responsibilities and defenses and the effect of notice of a defense or defect. In general, it extends the provisions of the Negotiable Instruments Law to all securities. The section gives validity to a security in the hands of a purchaser for value and without notice of a particular defect, even though the defect is so serious that it is said to go to the validity of the security. A security in the hands of a bona fide purchaser is voided only if so declared in a Constitution or statute, either expressly or by unavoidable implication.

#8-203 deals with matured or called securities, and makes an extensive modification in the policy that a holder in due course must take before maturity of the instrument. The defense of lack of notice is limited to one and two years depending upon the circumstances. It permits the issuer to determine definitely its liability with reference to invalid or improper issue, and this point is fixed at two years maximum after the default. The section does not, however, extend beyond the redemption date, the life of preferred stock called for redemption.

#8-204 provides that unless noted conspicuously on the security, a restriction on transfer imposed by the issuer, even though otherwise lawful, is ineffective, except against a person with actual knowledge of it. The Code does not undertake to deal with restrictions on transfer imposed by private agreement or restrictions on transfer imposed by other statutes.

Under #8-205 a forged security is made valid in the hands of a purchaser for value without notice, if the signing was done by one entrusted by the issuer with the signing, or by an employee entrusted with responsible handling of the security. #8-206 continues prior law on the effect of completion or alteration of an instrument.

#8-207 covers the rights of the issuer with respect to registered owners and #8-208 states the warranties made by an authenticating trustee, registrar, or transfer agent in signing a security.

Part 3: Purchase

In general, this part extends the doctrine of negotiability to all investment securities. #8-302 defines a bona fide purchaser as a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. #8-304 defines when a purchaser has notice of an adverse claim. #8-305 sets time limits when staleness, or the purchase of a security after it has been called for redemption or payment, gives notice of adverse claims. #8-306 sets forth the
warranties a person makes when he presents a security for registration of transfer, payment or exchange.

#8-307 through 8-311 deal with indorsements: the effect of delivery without indorsement, the right to compel indorsement, how an indorsement is made, the effect of an indorsement, and the effect of an unauthorized indorsement.

#8-312 through 8-316 deal with various aspects of guaranteeing signatures, delivery of securities, the reclamation of securities wrongfully transferred, and a purchaser's right to requisites for registration of transfer.

#8-317 continues the basic provision of the Uniform Stock Transfer Act that an attachment or levy on a security can only be made by actually seizing or possessing the security so it can no longer be transferred. In Iron City Savings Bank v. Issacsen, 158 Va. 609, 632, 164 S.E. 520 (1932), the Stock Transfer Act was interpreted to mean that the holder of the stock must be before the court. This section of the Code provides that a creditor whose debtor is the owner of a security is entitled to the aid of courts in reaching it to satisfy his claim.

#8-319 establishes a statute of frauds for the sale of securities, and since Virginia has not had such a statute covering securities, this changes Virginia law.

Part 4: Registration

An issuer is required to register the transfer of a security in registered form when the requirements set forth in #8-401 have been met. #8-402 provides that the issuer may require assurances that each necessary endorsement is genuine and effective, including a guarantee of the signature of the person indorsing.

The other sections of this part deal with the issuer's duty of inquiry when a security is presented for registration, the issuer's liability as a result of registration, circumstances under which an issuer must issue a new security when a security has been lost, destroyed, or wrongfully taken, and the duties of an authenticating trustee, transfer agent, or registrar.

ARTICLE 9
SECURED TRANSACTIONS

I. GENERAL COMMENTS

Prior to detailed consideration of some provisions of Article 9 and their application to conventional Virginia business transactions it may be well to respond to two general objections frequently made to this Article.

These two objections are:

1. "Article 9 is completely novel." Implied in this objection is the further objection that lawyers would find Article 9 "foreign" and would have to learn "security law" all over again; this, in turn, might lead to a fear that Virginia security law would suffer from uncertainty until a lengthy and extensive training period had expired.

2. The unsecured seller selling goods to merchants will suffer under the Code because Article 9 permits a lender to obtain a valid lien on a shifting stock of merchandise and permits a floating lien for future advances and on after-acquired property.
19

After attempting a refutation of these two objections, a brief examination will be made of some of the problem areas of Article 9, followed by a summary of some of the advantages of Article 9 over current Virginia law.

A. General

Peter Coogan (an eminent practicing attorney and lecturer at Harvard) states there are two ways of approaching Article 9: We can look for and employ our knowledge of what's familiar or we can look for and accent what's different. Employing the first approach, Coogan demonstrates that the fundamentals of Article 9 are easily and quickly grasped by "security lawyers". (Coogan, A Lazy Lawyer's Guide to Secured Transactions Under the Code, 60 Mich. L. Rev. 685.)

Coogan suggests that lawyers continue to think in terms of traditional security devices when employing Article 9 with respect to secured transactions.

We will attempt to show below how the more common traditional (Virginia) secured transactions would come into existence and be handled under Article 9.

Let us stipulate, however, that the oversimplifications which follow will inevitably conceal some difficult problems which could arise under Article 9 (the problems concealed are equally or more difficult under present law).

B. General Observations and Essential Definitions.

No amount of magic or oversimplification can conceal the fact that Article 9 is complex (but so is present security law), so some minimum of definition and background is essential to even a simplified illustrated exploration of Article 9.

1. The concepts of "title" and lien are not employed in the determination of rights, duties, and priorities in Article 9.

2. Only the conceptual dividing lines between traditional security devices have been abandoned; the approach is functional, that is, rights, duties, priorities turn on what purpose the security was intended to serve rather than the conceptual form of the security, e.g., having the controversy turn upon whether a particular instrument was a chattel mortgage or a conditional sale does not happen under Article 9.

3. The traditional terminology surrounding secured transactions has been largely abandoned—this to escape the existing judicial and legislative meanings given the old terminology.

4. "Filing" (recording) under Article 9 does not necessarily "perfect" the security interest.

5. A "perfected" security interest under Article 9 will not always have priority over another security interest. However, a "perfected" (and otherwise valid) security interest (in the original security) will always withstand attack by lien creditors and a trustee in bankruptcy (to the fullest extent to which state law can afford the latter protection).

6. Article 9 contains three distinct methods of "perfecting" security interest: (1) taking possession (2) filing (3) doing nothing ("automatic perfection") BUT: The method or methods of "perfecting" permitted under Article 9 turn upon the nature of the security, and/or the use to which the security is to be put, e.g., is the security a television set being purchased by retailer, or by a consumer?—or is it a warehouse receipt?
7. No secured creditor should be content with the security interest he has created until he has thoroughly studied the sections of Article 9 dealing with priorities. These sections control his right to ultimate realization as much, or more so, than the sections dealing with creation and "perfection" of the security interest.

8. Article 9 enables a secured creditor to claim a security interest in the "proceeds" of the original security, e.g., the conditional sales contract obtained by an automobile dealer when selling to a consumer would be "proceeds" as regards a secured party whose original security interest was obtained by "floor-planning" the autos for the dealer. (Extending the security interest to "proceeds" is not entirely novel; the Uniform Trust Receipts Act, already Virginia law, extends the security interest to "proceeds". Incidentally, any lawyer familiar with the Trust Receipts Act will have a relatively easy task of understanding Article 9). Article 9 extends the "proceeds" concept to all security interests; in so doing, entirely new (and difficult) priority problems have been created.

9. The "security agreement" and a "financing statement" are not the same; they have different purposes. But a "security agreement" may be used as a "financing statement".

Thus alerted to the more obvious quirks of Article 9, we proceed to the minimum of definitions essential to basic understanding of the Article. For brevity and simplicity, the definitions will be by way of factual illustration and/or in terms of present law, when practicable:

"Goods"—tangible personal property. There are four types of "goods" in Article 9:
- "Consumer goods"—a television set, auto, furniture, etc., being held for personal use.
- "Farm products"—things grown or produced by and held by a farmer—wheat, eggs, etc., in the hands of the farmer.
- "Equipment"—machinery in a plant, furniture in an office, an auto used primarily for business, etc.
- "Inventory"—the things being manufactured by a manufacturer, also cars, televisions, hardware, clothing or other merchandise being offered for sale to consumers by retailers.
- "Instruments"—a negotiable instrument or a security (Article 8) other than a document of title, e.g., a demand negotiable note.
- "Document"—a document of title such as a bill of lading or a warehouse receipt.
- "Chattel paper"—a conditional sale contract or a chattel mortgage.
- "Account"—an unsecured unconditional right to receive money arising from a sale of goods or services—the traditional "accounts receivable".
- "Contract right"—an unsecured conditional right to receive money—a builder's contract right to payment when, and if, he completes the building.
- "General intangibles"—any form of intangible personal property not previously mentioned above—copyrights, trademarks, patents, and the like.

THE METHOD, OR METHODS, OF PERFECTION, PLACE OF FILING, AND PRIORITY ALL TURN ON THE ABOVE CLASSIFICATIONS OF PROPERTY—HENCE, IT COULD WELL BE SAID THAT THESE CLASSIFICATIONS (ALONG WITH THE PURCHASE MONEY CONCEPT BELOW) ARE ARTICLE 9'S SUBSTITUTE FOR THE PRESENT LAW'S CONCEPTUAL METHOD OF DISTINGUISHING AMONG THE VARIOUS SECURITY DEVICES.

"Purchaser money security interest"—A security interest taken or retained by a seller to secure the price or a security interest taken by a lender of money whose loan has enabled a person to acquire personal property—a bank loan made directly to a consumer and used by the consumer to purchase an automobile, the bank taking a chattel mortgage as security for its loan.

1. Conditional Sale
(a) (at retail level—other than automobile)—A consumer buys a refrigerator from a dealer and secures the price with a conditional sale. Under Article 9 this would be classified as a purchase-money security interest in consumer goods. The security agreement must be in writing to be valid even between the dealer and the consumer (a change in Virginia law) but any writing which evidences an intent to secure the transaction, describes the collateral, and is signed by the consumer—debtor is sufficient (#9-203). Thus, existing forms may be used. The dealer does not have to file anything—his security interest is perfected without filing (automatic perfection) (#9-302). The only risk the dealer runs by not filing is that he could lose his security interest if the consumer sold the refrigerator to a person without actual knowledge of the security interest and that person used the refrigerator for his personal use (not a second hand dealer, for example); even this slight risk is eliminated if the dealer wishes to, and does in fact, file (#9-307(2)).

The consumer runs no risk of buying subject to an existing security interest against the dealer's stock in trade; even if he knows of such interest he cuts it off (#9-307(1)).

In the event of default the dealer may peaceably repossess, sue for the balance, repossess by legal action, etc. (#9-503, 9-504, 9-505, 9-506). He may sell at public sale and in certain instances (and this is one of them) he may sell at private sale (#9-504(3)). The dealer's expenses of repossession, storing, selling, and reasonable attorney's fees may be added to the debt (#9-504(1)(a)). However, if the consumer has paid 60% or more of the purchase price, or the loan, the consumer may request a public sale (#9-505(1)). Unless the dealer and consumer agree that the dealer will accept the collateral in satisfaction of the debt, the dealer has a right to a deficiency judgment (#9-504(2), 9-505(2)). (These are changes in present Virginia law—giving clearer and better rights to both dealer and consumer).

(b) Conditional sale—at retail level—automobile—Same as (a) above except the existence of the security interest must be noted on the title certificate to become perfected (#9-302(3)(b)). Remedies of dealer and consumer are the same as in (a) above.

(c) Conditional sale contract or purchase-money chattel mortgage or deed of trust—assigned or sold to bank or other lending institution by dealer. Illustration—appliance dealer sells or assigns his conditional sales contract to bank.

Under Article 9 this transaction would be classified as a security interest in chattel paper. The bank need not examine for prior filings by other lenders; the bank will take the contracts free of any existing security interest unless it had actual knowledge of a prior security interest (first sentence, #9-308). The bank steps into the shoes of its assignor insofar as method of filing, perfection priority and method of realizing upon the security, as against creditors of and purchasers from the consumer who purchased from the dealer. However, as against creditors of, or purchasers from, the dealer (the bank's assignor), the bank needs to perfect its security interest in the chattel paper. This perfection may be accomplished in either of two ways: if the bank retains possession of the conditional sales contracts its security interest is perfected by possession (#9-305); if the bank chooses to give possession of the conditional sale contracts to the dealer (for collection or other purposes) it may do so without the risk of having the transaction declared void for failure to "police" the collections (repeal of Benedict v. Ratner, #9-205) but now the bank must file a financing statement to perfect its security interest and even after filing the bank runs a risk that a purchaser without notice of the contracts left in the dealer's hands will cut off the bank's security interest (#9-308). The bank can eliminate this risk by stamping the conditional sales contracts (the "chattel paper") in such a way as to indicate its security interest. The bank is given a limited security interest in the money collected by the dealer from the consumer—as "proceeds" of the original security (#9-306).
All of the above observations also apply to a conditional sale contract which is in the form of a lease.

2. Chattel Mortgage or Chattel Deed of Trust--

(a) As security for purchase money at retail level—other than automobiles--

Under Article 9 this would be classified as a purchase money security interest in consumer goods. Hence, all the observations and rules stated in part 1(a) above relative to conditional sales would be applicable. The difference in the conceptual form of the security would make no difference in operation and result.

(b) As security for purchase money at retail level—automobiles--

Under Article 9, same rule and results as under 1(b) above or conditional sales.

(c) Chattel mortgage other than purchase money. This is the orthodox use of the chattel mortgage. Under Article 9 rights, duties, priorities will turn upon the further question of the type of goods which the chattel mortgage secures. That is, are the goods "consumer goods"; "equipment" or "farm products" (under present Virginia law no lender in his right mind would use a chattel mortgage against inventory—it would be a fraudulent conveyance).

Illustration-An owner of a fully paid-for pleasure boat borrows and uses the boat as security. Under Article 9 this would be classified as a "security interest in consumer goods" (not purchase money). (#9-109(1)). The lender should check for prior filings (#9-312). The significant difference in the handling of this secured transaction from those previously discussed is caused by its not being a purchase money security interest; thus, even though "consumer goods" are involved the lender's security interest requires a filing to become "perfected" (#9-302(1)) unless the lender takes possession of the boat (#9-305). A filing would also be required to perfect "chattel mortgage" security interest in "equipment" and "farm products". The lender's priority in the original security (boat) would, we believe, be almost unassailable if prompt filing had been made by the lender and the lender had checked and found no prior filing (see #9-312). (Perhaps the security interest would lose effect if the borrower were a boat dealer and placed this, his personal boat, in his inventory.)

(d) Assignment or sale of chattel mortgage to a buyer or lender--

Under Article 9 the chattel mortgage would be "chattel paper". Thus as regards the rights, duties, priorities of the buyer or assignee of the chattel mortgages, as against creditors of and purchasers from the lender's seller or assignor, the discussion in 1(c) above on conditional sales would be applicable in its entirety.

3. Trust Receipt Financing--

This form of financing is used in Virginia to finance acquisition of inventory by retailers, particularly acquisition of large items such as autos, refrigerators, etc. It is often referred to as "floor planning". It may also be used to finance the acquisition of new material for manufacturers.

Probably its most typical use is to finance the purchase by an auto dealer of his stock of new cars. We select this as our illustration.

Under Article 9 the "floor planning" of autos would be described as a purchase-money security interest in inventory. The lender should first check for prior filings. Dealer and lender must have a written security agreement. The lender's security interest cannot become perfected until a financing statement is filed (#9-302) unless the lender takes possession of the autos (#9-305). Filing can ante-
date the advance of money. The financing statement is the same for all secured transactions under Article 9 (except "farm products" and fixtures); it must contain the address of the secured party, give the mailing address of the debtor, state the type of collateral, and be signed by the debtor (§9-402). This illustration affords a most appropriate instance for the financing statement to claim security interest in "proceeds" from the sale of the automobile (§§9-402(3)(h), 9-306; but see §9-308).

After this type of security transaction is "perfected" the lender has excellent priority as to the original security (§9-312) but one who lends against inventory will always lose to purchasers in the ordinary course of business (§9-307(1)). This latter is not a change in the present law.

If in checking the records our lender had found that another lender's financing statement covered the same type collateral, he could still have financed the purchase of new cars for this dealer and obtained a valid security interest by giving the notice set forth in §9-312(3). Thus, Article 9 quite effectively prevents one financier from obtaining a monopoly in the financing of a customer's inventory.

All that has been stated in this portion of the memorandum would be equally applicable to "floor-planning" refrigerators, stoves, television sets, etc.

4. Accounts Receivable financing--

(a) Factoring type arrangement--retailer or manufacturer procures money by a "sale" or assignment of amounts due him by his customer.

This lender should first check for prior filings. Lender and borrower must enter into a written security agreement (§9-203). A security interest in accounts can be perfected only by filing unless the total of the assignments transfers only an "insignificant part of the outstanding accounts of the assignor" (§9-302(1)(d)). The best rule to follow is--file!

A security interest in accounts is not rendered legally invalid because of failure of the lender to "police" collections and returned merchandise; Article 9 abolishes the rule of Benedict v. Ratner (§9-205).

An assignment of an account is legally effective even though no notice is given the account debtor but the account debtor may pay the assignor of the account and be discharged unless he, the account debtor, has been notified of the assignment. (§9-318(3)).

Quite frequently a large customer of the borrower will use a purchase order which prohibits assignments of that customer's account. Article 9 expressly invalidates a clause prohibiting assignments (§9-318(h)) and thus the existing practice of some lending institutions to make loans on such accounts is no longer clouded by legal uncertainty.

(b) Bank "charge plans"--

In essence, these plans are true sales of accounts, or non-recourse assignments of accounts; however they would be treated as a security interest under Article 9--a security interest in accounts (§9-102(1)(b)). Thus, the discussion in 4(a) immediately above would be fully applicable to such charge plans, or any other true sale of accounts.

5. Agricultural Deeds of Trust and Crop Liens--

Under Article 9 these would be classified as a security interest in farm products (§9-105(1)(f), 9-109(3)). Unborn animals and growing crops can be subjects of such security interests (§9-105(1)(f)). An after-acquired property clause is limited in
its effect to crops which become such within one year after the execution of the security interest except where the security agreement containing the after-acquired property clause was a purchase money or improvement deed of trust on the land itself (§9-201(h)(a)).

The lender should check for prior filings. A security agreement in writing must be executed (§9-203). A financing statement must be filed for "perfection", but here the financing statement must contain one additional piece of information: it must describe the land on which the crops are growing or are to be grown (§9-402(1), 9-402(3) 2). The place of filing a financing statement for "farm products" includes the county in which the crops are growing or are to be grown (§9-401-optional).

The lender who makes loans on crops, etc. ("farm products") is given a preferred position insofar as protection against purchasers is concerned: a purchaser in ordinary course of business does not buy free of a perfected security interest when he buys directly from the farmer (§9-307(1)).

A lender making an enabling advance against crops not more than three months before planting is given a very limited priority over lenders whose security interest in the crop did not result from an enabling advance (§9-312(2)). However, if this priority is not satisfactory to a lender making an enabling advance, Article 9 recognizes the validity of a subordination agreement, and thus the enabling lender (with the consent of the lender having a higher priority) could advance his priority (§9-316).

6. Pledges--
(a) Tangible personal property--"goods"—Illustration—Pledge of diamond ring.

Under Article 9 this would be classified simply as a security interest in goods perfected by possession. The lender should check for prior filings. The security agreement is effective even though not in writing (§9-203(a)). No filing is required; the security interest is perfected by possession; however the lender may also perfect by filing (§9-305, 9-302).

The rights, duties and remedies on default are clearly spelled out in Article 9 (§9-504, 9-506, 9-507, 9-207).

If our lender found no prior filing his security interest would, it seems, have top priority (§9-312(5)(6)).

(b) Bills of lading and warehouse receipts—"Documents".

Under Article 9 these pledges would be classified as security interests in documents perfected by possession.

If the documents are negotiable, and have been "duly negotiated" to our lender, then our lender need not check for a prior filing (§9-309, 9-304(1)).

Again, no written security agreement is legally required (§9-205(1)) but the lender would be wise to reduce the transaction to writing because these documents will ultimately leave the lender's possession and the lender might desire a perfected security interest for a period longer than his period of possession plus twenty-one days, and our lender might wish to claim "proceeds" and perfect his interest in proceeds for a period longer than thirty-one days. (See §9-304(5) and (6) and 9-306(3)).

Again, the security interest is perfected by possession, and, in addition, it is perfected for twenty-one days after a release of possession if the release of possession was for the usual business purposes (§9-304(5)). This latter is "automatic perfection."
During the period of time the documents are out of the lender's possession he runs the risk of losing his security interest by due negotiation to a holder, that is, transfers to one who is a "holder in due course" (§-309). This is not a change in the law. The lender may protect himself by notation on the document or by seeing to it that the borrower has no opportunity to negotiate the document.

Filing, although not necessary, is advisable because of the limited duration of perfection as to the document and its proceeds (§§9-304(5) and (6) and 9-306(3)). The filing can precede the advances.

Priority is excellent so long as possession is retained and for twenty-one days thereafter (with the exception noted above (§9-312(5)(a)).

(c) Negotiable paper—"Instruments"—Illustration—pledge of a negotiable note.

Under Article 9 a pledge of negotiable paper would be described as a security interest in instruments perfected by possession. The bank need not check for prior filings (§9-309).

No written security agreement is legally necessary (§9-203(1)(a)). The security interest is perfected by taking possession (§9-305). There is no advantage gained by filing; possession and "automatic perfection" are the only ways of perfecting a security interest in negotiable paper (§9-304(1)(4)(5)). The lender's rights will turn largely upon Article 3 on Commercial Paper.

Some rights and duties of the lender are set out in §§9-207 and 9-504.

Again, top priority seems likely so long as possession has not terminated, twenty-one days thereafter has not elapsed, and a holder in due course has not acquired rights (§§9-312(5)(b) and 9-309).

(d) "Field warehousing"

This is essentially a pledge of the goods. If the field warehouse is "bona-fide" there would be no need of filing under the Code. However, a lender may wish to have a written security agreement and file a financing statement as insurance against a creditor successfully proving that the field warehouse was not bona-fide, in which event, the lender's security interest would be defeated unless he could show that under the Code he had "an existing security interest in inventory—perfected by filing." To the extent that field warehousing involves the issuance and pledge of documents of title the previous discussion on pledges is applicable.

7. "Lay-away" plans—

Illustrations—consumer buys a dress from a merchant and the merchant retains possession of the dress until all installments have been paid.

There is at present no satisfactory law in Virginia covering this security device. Unfairness and harsh forfeitures are too frequent.

Under the Code, this "seller's lien" in a "lay-away" (which arises under §2-703(a) of Article 2) is a "security interest" under Article 9 (§9-112). Clear, and ostensibly fair, rules are laid down in Article 9 for the adjustment of a controversy between a "lay-away" merchant and his customer (§§9-504 through 9-507).

8. Fixtures—Illustration—furnace in a home.

Article 9 provides for a security interest in fixtures but does not define the term.
There can be no security interest under Article 9 as regards lumber, brick, tile, and the like which are incorporated into a building (#9-313).

The security interest in fixtures must be evidenced by a written security agreement (#9-203(1)(b)). Perfection is achieved by filing a financing statement (#9-302(1)). The financing statement must also contain a description of the land on which the fixture is located (#9-402(1)). The financing statement is filed and indexed with mortgages and deeds of trust on land (#9-401).

A perfected security interest in fixtures has priority over:
(a) a purchaser for value of the realty
(b) a prior encumbrance on the realty but only to the extent of advances made by the realty lender after perfection of the security interest in fixtures.
(c) a lien creditor subsequent to perfection of the security interest in fixtures.

BUT-When a holder of a security interest in fixtures exercises his priority over persons having an interest in the realty he must reimburse any (non-consenting) holders of an interest in the realty for the cost of any repair of any physical injury caused the realty by the removal of the fixtures (#9-313(1-5)).

II. UNSECURED SELLERS AND ARTICLE 9

The belief that under present law unsecured sellers have a residuum of unencumbered assets for realization of their claims is probably illusory to a large degree.

Under present law all the stock-in-trade, equipment, and accounts of a retailer can be encumbered: Trust Receipts, Conditional Sales of equipment, Consignments, Factoring, and assignment of accounts receivable, when combined, can, even today, encumber all the assets of a retailer.

The only change made by Article 9, in this regard, is that it's easier to encumber all the assets, and if the lender is "piggish" he can now legally claim a "floating" lien which covers after-acquired property.

Will lenders be "piggish" if the Code is adopted? The experience in Pennsylvania has shown they will not. In addition, if the lender attempts to make full use of his legally permissible right to "tie up his borrower" the lender is likely to find his security upset, in bankruptcy. See Coogen, The Effect of the Uniform Commercial Code Upon Receivables Financing—Some Answers and Some Unresolved Problems, 76 Harv. L. Rev. 1529 (1963). This could help explain why lenders operating under the Code have not proved "piggish".

One further point should be made. Under the Code a security interest is so easily and cheaply created and perfected that any seller who has doubts as to unsecured credit could become a secured creditor. The manufacturer supplying the small retailer could himself achieve secured priority over a "floating lien" by (1) giving notice, (2) obtaining a written security agreement from his retailer (the seller's order blank would suffice, with the addition of one sentence), and (3) filing once (which would cover a chain of transactions). (See #9-312(3).

III. A PROBLEM AREA OF ARTICLE 9

The priorities sections of Article 9 have been shown by some writers to (1) not answer all priority problems, and (2) not always protect the interest which is more vital to the business community.

Suffice it to say that generally the criticisms are directed to results reached in hypothetically possible, but rare situations created by the critics. And, generally speaking, until the priorities sections are amended after extensive study, lenders can avoid the deficiencies of Article 9's priority sections by exercising diligence.
Additionally, it can be stated that it is conflicting claims to "proceeds" which most loudly is said to demand further consideration and amendment. These are problems the existing law does not pretend to answer.

IV. SUGGESTED AMENDMENTS

We do not recommend any significant departure from the language of this Article. However, we suggest two minor amendments as follows:

#9-104. This section exempts certain transactions from the Article on Secured Transactions, which, among other provisions, prevents enforcement of a contract clause prohibiting assignment of a debtor's rights in collateral. Among the exemptions is "a transfer of an interest or claim in or under any policy of insurance". We propose to add the following language: "or contract for an annuity, including a variable annuity".

This will prevent an unfortunate or improvident person from losing or dissipating rights in an annuity contract which he may have spent years in accumulating against the needs of his old age.

#9-302. Paragraphs (1) (c) and (1) (d) of this section require that a financing statement be filed to protect a purchase money security interest in a motor vehicle. This is inconsistent with another provision of the same section, and we propose the deletion of this requirement.

Virginia law requires a notice of lien to be placed on the certificate of title of a motor vehicle and gives adequate protection to creditors.

ARTICLE 10

EFFECTIVE DATE--TRANSITIONAL PROVISIONS

This Article fixes the effective date of the Uniform Commercial Code, provides for repeal of prior uniform acts and inconsistent statutes, and sets forth certain laws not to be affected or repealed by adoption of the Code.
1. Chapter 140 of the Acts of Assembly gives the governing body of every county the power to provide motor vehicle liability insurance for the purpose of protecting all operators of motor vehicles owned or leased by the county.

2. Determination of Motor Vehicles Liability Insurance Policies--V/38.1-70.9. No contract of liability insurance covering the operation of a motor vehicle which has been in effect for sixty days shall be terminated by the insurer by cancellation or failure to renew, except for nonpayment of premium, unless the insurer gives the named insured notice in writing at least thirty days prior to the proposed date of termination;
   (a) That it proposes to terminate by cancellation or failure to renew the insurance contract upon such date; and
   (b) That the named insured, within fifteen days after the mailing of such notice, may, at his option, request the insurer to furnish a written explanation of its specific reason or reasons for terminating or failing to renew; and
   (c) That, upon receipt of a written request from the named insured, it will forthwith mail to the named insured such written explanation.

V/38.1-70.10. If the named insured exercises his option to request an explanation the insurer forthwith, but in any event prior to the date of the proposed termination or failure to renew, mail to the named insured a written explanation, giving the reason or reasons for its failure to renew the contract.

V/38.1-70.11. An explanation furnished in accordance with 38.1-70.10 shall be privileged, and shall not constitute grounds for any cause of action against the insurer or its representatives or any firm, person or corporation who in good faith furnishes to the insurer the information upon which the reasons are based.

V/38.1-70.12. The provisions of 38.1-70.9 to 38.1-70.11 shall not apply to policies of liability insurance issued under any assigned risk plan established in conformity with 38.1-264.

V/38.1-70.13. When any policy of insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle is cancelled or terminated the insurer or his agent shall report such fact to the Commissioner of the Division of Motor Vehicles within fifteen days of the cancellation thereof.

3. V/38.1-349 reduces the time period in the "incontestible clause" of accident and sickness policy provisions from 3 years to 2 years.

4. V/38.1-361.1 reads: "No insurer having issued a policy of accident and sickness insurance pursuant to the provisions of this article shall deny liability on any claim otherwise covered under such policy because of the existence of a disease or physical impairment or defect, congenital or otherwise, at the time of the making of the application for such policy, unless it be shown that the applicant knew or might reasonably have been expected to know of such disease, impairment or defect."
966 Legislative Changes

5. V 46.1-331 now reads in part:  
   (a1) Nor shall any such policy or contract relating to ownership,  
   maintenance or use of a motor vehicle be so issued or delivered unless it  
   contains an endorsement or provision insuring the named insured any (and)  
   other person responsible for the use of or an using the motor vehicle with  
   the consent, express or implied, of the named insured, against liability for  
   death or injury sustained, or loss or damage occasioned within the coverage  
   of the policy or contract as a result of negligence in the operation or use of  
   such vehicle by the named insured or by any such person, notwithstanding the  
   failure or refusal of the named insured or such other person to cooperate  
   with the insurer under the terms of the policy; provided, however,  
   that if such failure or refusal prejudices the insurer in the defense of an  
   action for damages arising from the operation or use of such motor vehicle,  
   then this endorsement or provision shall be void.  
   (a2) Any endorsement, provision or rider attached to, or included in, any  
   such policy of insurance which purports to seek in any way to limit or reduce  
   in any respect the coverage afforded by the provisions required therein by this  
   section shall be wholly void.  

6. V 46.1-400 provides that accident reports must be made to the  
   Division of Motor Vehicles within 5 days of the accident if the property  
   exceeds $100 (formerly the limit was $50).  

7. Under Chapter 247 the amount constituting grand larceny has been  
   raised from $50 to $100.  

8. V 18.1-91 provides a penalty of death or life imprisonment for  
   robbery with assault or putting anyone in fear of bodily harm.  

9. V 13.1-69.1 (new) makes it a felony to set a spring gun. There  
   was formerly no Code provision relating to any penalty for setting  
   such guns.  

10. V 46.1-190 (i) provides that reckless driving shall include  
    driving 20 or more mph above the posted limit or in excess of 60 mph  
    regardless of the posted limit. Formerly the limit was 75 mph and  
    no mention was made as to any particular mph above the applicable  
    posted limits.  

11. V 15.1-56.1 creates the crime of driving while under the impair­  
    ment of intoxicants and provides that when alcoholic content in the  
    blood is between .10 and .15%, the presumption arises that the ability  
    of the accused was impaired within the meaning of this statute.  

12. V 46.1-230 says that where intersections of streets contain no marked crosswalks, pedestrians shall not be guilty to neg­  
    ligence as a matter of law for failure to cross at intersections.
13. V/#46.1-22 (a) (4) (New) provides that "The operator of any publicly owned vehicle operated by or under the direction of a police officer in chase of violators or suspects...may, without subjecting himself to criminal prosecution, pass or overtake with due regard to the safety of persons and property, at any intersection! This new section was occasioned by the decision in 207 Va. 276 where a policeman was found contributorily negligent for overtaking a speeder's car at an intersection. That case was decided under Va/#46.1-190 which provided "(e) a person shall be guilty of reckless driving who shall overtake or pass any other vehicle proceeding in the same direction...at any intersection of highways...and...The provisions of this Chapter, applicable to the driver of vehicles on the highway, shall apply to drivers of all vehicles regardless of ownership..."

14. The underlined words were added to V/#40-61.2: In construction, maintenance, excavation and demolition work, adequate and suitable shoring and other safeguards shall be used whenever such work has progressed to the degree that dangers to the employees or general public may exist.

15. By V/#4-636 the maximum amount recoverable in a wrongful death action has been raised from $35,000 to $40,000. This is not retroactive and takes effect as of July 1, 1966.

16. V/#8-441 deletes the requirement that allegations be under oath in suggestion for institution of garnishment proceedings.

17. Under V/#8-199, counsel for either party may, on voir dire, examine jurors and ask any relevant question to determine interest, prejudice, or bias. Formerly counsel had to petition the court that this be done and the court questioned the jurors.