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**UNIFORM COMMERCIAL CODE—Secured Transactions—A  
Bank's Equitable Right of Set-off is Subordinate to a  
Perfected Security Interest in an Instrument**

*First National Bank v. Lone Star Life Insurance Co.,*  
524 S.W.2d 525 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.).

T.H. Hamilton borrowed funds from Lone Star Life Insurance Company, and as one of the conditions of the loan he purchased a certificate of deposit from the First National Bank in Grand Prairie with loaned funds. Pursuant to a security agreement, the certificate of deposit was then pledged and delivered to Lone Star. Hamilton subsequently defaulted on the loan causing Lone Star to foreclose on the certificate of deposit. Lone Star presented the certificate which the bank refused to honor claiming an equitable right of set-off against Hamilton's account for a previous indebtedness. Lone Star disputed the bank's right of set-off because one of the bank's officers was present throughout the loan transaction, giving the bank actual knowledge of Lone Star's security interest in the certificate.

Lone Star brought suit to recover the funds represented by the certificate of deposit, plus interest. The trial court rendered judgment for Lone Star, holding the bank's knowledge of the plaintiff's interest in the certificate precluded it from offsetting Hamilton's debt to the bank. On appeal, the bank contended the Uniform Commercial Code required the filing of a financial statement for perfection of a security interest in such a deposit.<sup>1</sup> Since Lone Star had made no such filing, the bank reasoned its equitable right of set-off was superior to Lone Star's interest. Held—*Affirmed and modified*. A certificate of deposit is an "instrument" within the purview of Chapter 9 of the Texas Business and Commerce Code;<sup>2</sup> perfection of a security interest in an "instrument" can only be effectuated through possession and is superior to a bank's equitable right of set-off.<sup>3</sup>

A bank's right of set-off is a right accorded the bank in equity, and arises due to the nature of the relationship between the bank and the depositor.<sup>4</sup> When funds are deposited, absent an agreement with the bank as to any special disposition of the funds, the deposit creates a debtor-creditor relationship and the deposit is considered a general deposit.<sup>5</sup>

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1. TEX. BUS. & COMM. CODE ANN. § 9.306(c) (Tex. UCC Supp. 1974).

2. *Id.* § 9.105(a)(9).

3. *First Nat'l Bank v. Lone Star Life Ins. Co.*, 524 S.W.2d 525, 530 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.).

4. *Van Winkle Gin & Mach. Co. v. Citizens' Bank*, 89 Tex. 147, 153, 33 S.W. 862, 864 (1896); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

5. *First Nat'l Bank v. Winkler*, 139 Tex. 131, 137, 161 S.W.2d 1053, 1056 (1942);

This debtor-creditor relationship between the bank and its general depositor becomes important when the depositor is indebted to the bank through a transaction unrelated to the deposit account. The mutual debtor-creditor relationship raises the implication of an agreement that the depositor's indebtedness may be satisfied with the deposited funds.<sup>6</sup> This implication, however, is often negated if the deposited funds actually belong to one other than the depositor. If the bank is aware or has notice of facts sufficient to impute knowledge that the deposits made by a debtor in his own name belong to a third person, the right of set-off is precluded.<sup>7</sup> Where the bank has no such knowledge, there is a sharp division of authority. It is generally held that the bank may apply the deposit to the individual debt of the depositor-debtor.<sup>8</sup> Texas appears to follow the minority rule that a bank is not entitled to the right of set-off unless the lack of knowledge results in a change in the bank's position, and superior equities have been raised in its favor.<sup>9</sup>

Notifying a bank of a third party's interest in deposits, or being in a position in which superior equities have been raised, are not the only methods in which a set-off may be averted. By making a special deposit, as opposed to a general one, a depositor can protect his funds from set-off.<sup>10</sup> When the bank has knowledge of a special purpose to which deposited funds are to apply, either by express agreement with the depositor or through the existence of facts sufficient to impute such knowledge, the bank cannot assert a right of set-off.<sup>11</sup> To allow a set-off would defeat the purpose for which

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*Van Winkle Gin & Mach. Co. v. Citizens' Bank*, 89 Tex. 147, 153, 33 S.W. 862, 864 (1896); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

6. *Southwest Nat'l Bank v. Evans*, 221 P. 53, 55 (Okla. 1923); *Citizens' Bank & Trust Co. v. Yantis*, 287 S.W. 505, 508 (Tex. Civ. App.—San Antonio 1926, no writ). *See also Melson v. Bank of New Mexico*, 332 P.2d 472, 473 (N.M. 1958).

7. *National Indem. Co. v. Spring Branch State Bank*, 162 Tex. 521, 523, 348 S.W.2d 528, 529 (1961).

8. *Arnold v. San Ramon Valley Bank*, 194 P. 1012, 1014 (Cal. 1921); *Kamfner v. Auburn Park Trust Bank*, 176 N.E. 363, 366 (Ill. 1931); *Bogle v. Shaffer State Bank*, 212 N.W. 547, 549 (Iowa 1927); *Kimmel v. Bean*, 75 P. 1118, 1121 (Kan. 1904); *Horigan Realty Co. v. First Nat'l Bank*, 273 S.W. 772, 775 (Mo. Ct. App. 1925); *Cooper v. Nevada Bank of Commerce*, 403 P.2d 198, 199-200 (Nev. 1965); *Hatch v. Fourth Nat'l Bank*, 41 N.E. 403, 405 (N.Y. 1895).

9. *National Indem. Co. v. Spring Branch State Bank*, 162 Tex. 521, 527, 348 S.W.2d 528, 531 (1961); *see Arnold v. San Ramon Valley Bank*, 194 P.2d 1012, 1014 (Cal. 1921).

10. A special deposit is defined as a deposit made for some special purpose or application, with a bank knowingly accepting the deposit for such purpose. *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

11. *R.M. Bourne & Co. v. Peoples Union Bank & Trust Co.*, 172 A.2d 814, 818 (Pa. 1961); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ). *See also Security Nat'l Bank Sav. & Trust Co. v. Moberly*, 101 S.W.2d 33, 37 (Mo. 1936); *Austin v. Lacy*, 2 S.W.2d 876, 878 (Tex. Civ. App.—Texarkana 1928, writ ref'd) (defining "special deposit" as a trust account in which title to the account does not pass to the bank).

the deposit was made.<sup>12</sup>

Special deposits and general deposits differ according to the relationship created between the bank and depositor. Unlike a general deposit, title to the funds in a special deposit does not pass to the bank. The bank holds the funds for safe-keeping only, and the relationship of bailor-bailee, rather than debtor-creditor, is created.<sup>13</sup>

The rules pertaining to general and special deposits are also applicable to deposits represented by certificates of deposit. Deposited funds evidenced by certificates of deposit are considered general deposits;<sup>14</sup> consequently, the bank has an equitable right of set-off against such deposits.<sup>15</sup> Of course deposits evidenced by certificates of deposit may be designated special deposits, and as such would not be subject to set-off.<sup>16</sup>

Since the certificate of deposit has been commonly regarded as transferable, whether negotiable or not, a bank's right of set-off has often been in conflict with the rights of a transferee.<sup>17</sup> Prior to the adoption of the Uniform Commercial Code, if the certificate was nonnegotiable a bank's obligation was only to the payee, and any assignee or transferee of the certificate stood in no better position than the original payee.<sup>18</sup> Thus, if a

12. See *First State Bank & Trust Co. v. George*, 519 S.W.2d 198, 205 (Tex. Civ. App.—Corpus Christi 1974, writ ref'd n.r.e.); *First Nat'l Bank v. Hargrove*, 503 S.W.2d 856, 860 (Tex. Civ. App.—Texarkana 1973, no writ); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

13. *Citizens' Nat'l Bank v. Hill*, 505 S.W.2d 247, 248 (Tex. 1974); *Hudnall v. Tyler Bank & Trust Co.*, 458 S.W.2d 183, 186 (Tex. 1970) (special deposit referred to as creating an agency or trust relationship whereby bank keeps or transmits identical property or funds entrusted to it).

14. *Washington County v. Stephens*, 267 P. 225, 226 (Idaho 1928); *Mutual Accident Ass'n v. Jacobs*, 31 N.E. 414, 416 (Ill. 1892); *In re Olson's Estate*, 219 N.W. 401, 403 (Iowa 1928); *Andrew v. Colorado Sav. Bank*, 219 N.W. 62, 65 (Iowa 1928) (refers to a deposit represented by a certificate of deposit as a "general deposit"); *accord*, *First Nat'l Bank v. Greenville Nat'l Bank*, 84 Tex. 40, 44, 19 S.W. 334 (1892).

15. *Marmon Fanning Co. v. People's Nat'l Bank*, 150 A. 402, 404 (N.J. Ct. Err. & App. 1930); *see, e.g., Messick v. Rardin*, 6 F. Supp. 200, 202 (E.D. Ill. 1934); *Merritt v. Peterson*, 222 N.W. 853, 854 (Iowa 1929); *In re Elliott's Estate*, 106 A.2d 453, 454 (Pa. 1954); *Doughty-Stevens Co. v. Greene County Union Bank*, 112 S.W.2d 13, 15 (Tenn. 1938).

16. *R.M. Bourne & Co. v. Peoples Union Bank & Trust Co.*, 172 A.2d 814, 818 (Pa. 1961); *Hudnall v. Tyler Bank & Trust Co.*, 458 S.W.2d 183, 186 (Tex. 1970); *First Nat'l Bank v. Greenville Nat'l Bank*, 84 Tex. 40, 44, 19 S.W. 334, 335 (1892).

17. *Fields' Adm'r v. Perry County State Bank*, 282 S.W. 555, 556 (Ky. Ct. App. 1926) (assignee of nonnegotiable certificate of deposit would have same defenses available as between original parties); *Doughty-Stevens Co. v. Greene County Union Bank*, 112 S.W.2d 13, 15 (Tenn. 1938) (where a transferee of a certificate of deposit took certificate subject to the bank's right of set-off); *see Bank of Serv. & Trusts v. Whitnack*, 468 S.W.2d 179, 182 (Tex. Civ. App.—Dallas 1971, writ ref'd n.r.e.). *See generally* *Montgomery v. Smith*, 145 So. 822 (Ala. 1933); *People's Sav. Bank v. Smith*, 230 N.W. 565 (Iowa 1930).

18. *People's Sav. Bank v. Smith*, 230 N.W. 565, 567 (Iowa 1930); *Fields' Adm'r v. Perry County State Bank*, 282 S.W. 555, 556 (Ky. Ct. App. 1926); *see* *Citizens State*

depositor's debt to a bank was mature at the time of assignment and the bank had no knowledge of the assignee's interest, the bank's right of set-off was superior to the assignee's rights.<sup>19</sup>

If the certificate of deposit was a negotiable instrument, the results were somewhat different. Where the transferee was a holder in due course, as defined by the Uniform Negotiable Instruments Act,<sup>20</sup> the bank's right of set-off was subordinate to the transferee's claim.<sup>21</sup> Substantially the same result is achieved under Article 3 of the Uniform Commercial Code—the holder in due course has a right in the certificate superior to the bank's right of set-off.<sup>22</sup>

In *First National Bank v. Lone Star Life Insurance Co.*,<sup>23</sup> the Dallas Court of Civil Appeals reasoned that a bank's equitable right of set-off "is still the law in Texas except for cases like the present, in which it has been displaced by the Code."<sup>24</sup> The court's conclusion was predicated on its interpretation of the UCC in which nonnegotiable certificates of deposit were held to be within the purview of article 9. Specifically, the court stated that a nonnegotiable certificate of deposit was an "instrument" and, as such, a perfected security interest could be effectuated *only* through possession.<sup>25</sup>

Since article 9 of the Code does not specifically refer to nonnegotiable certificates of deposit, the court relied on the Code's definition of "instru-

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Bank v. O'Leary, 140 Tex. 345, 350, 167 S.W.2d 719, 721 (Tex. 1942) (everything which can be called a debt may be assigned).

19. *Citizens' Bank & Trust Co. v. Yantis*, 287 S.W. 505, 508 (Tex. Civ. App.—San Antonio 1926, no writ); *see Fields' Adm'r v. Perry County State Bank*, 282 S.W. 555, 556 (Ky. Ct. App. 1926). *See also* 3 J. DANIEL, A TREATISE ON THE LAW OF NEGOTIABLE INSTRUMENTS 2047-50 (7th ed. T. Calvert 1933).

20. Tex. Laws 1919, ch. 123, § 52, at 196. The repealed statute provided:

A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was over due, and without notice that it had been previously dishonored, if such was the fact;
3. That he took it in good faith and for value;
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

*Id.*

21. *Id.* § 57, at 197. Prior to the adoption of the Uniform Negotiable Instruments Act in *First Nat'l Bank v. Security Nat'l Bank*, 51 N.W. 305 (Neb. 1892), where the certificate of deposit was overdue when negotiated, the holder took the certificate subject to the right of set-off which existed in the bank against the original payee at the time of the transfer. *Id.* at 306. *Graham & Locke Inv., Inc. v. Madison*, 295 S.W.2d 234, 244 (Tex. Civ. App.—Dallas 1956, writ ref'd n.r.e.) (distinguishes between holder and holder in due course).

22. TEX. BUS. & COMM. CODE ANN. § 3-305 (Tex. UCC Supp. 1974); *see Bank of Serv. & Trust v. Whitnack*, 468 S.W.2d 179, 182 (Tex. Civ. App.—Dallas 1971, writ ref'd n.r.e.); *Howick v. Bank of Salt Lake*, 498 P.2d 352, 354 (Utah 1972) (concurring opinion).

23. 524 S.W.2d 525 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.).

24. *Id.* at 529.

25. *Id.* at 530.

ment" as including the certificates.<sup>26</sup> An article 9 "instrument" includes any writing evidencing a right to the payment of money which is normally transferred by delivery with indorsement or assignment.<sup>27</sup> Certificates of deposit clearly evidence a right to the payment of money<sup>28</sup> and, in the ordinary course of business, are transferred by delivery with indorsement or assignment.<sup>29</sup> In *Southview Corp. v. Kleburg First National Bank*,<sup>30</sup> the Corpus Christi Court of Civil Appeals held that certificates of deposit were "instruments" within the purview of article 9 of the Code.<sup>31</sup> That case, however, involved a more detailed examination of the Code. By interpreting several articles together, the court held that the intent of the legislature in adopting the UCC was to include certificates of deposit within the purview of article 9, reasoning that it was applicable to any transaction intended to create a security interest.<sup>32</sup> Article 9.104(12) then excludes from the Code a transfer of an interest in any "deposit account."<sup>33</sup> "Deposit account," as defined in article 9.105(a)(5), *excludes* accounts evidenced by certificates of deposit.<sup>34</sup> Thus, the court in *Southview* reasoned that the Code's exclusionary language resulted in an inclusion of certificates of deposit.<sup>35</sup>

While there is little case law holding that certificates of deposit are "instruments" as defined in article 9, the interpretation in both *Lone Star Life* and *Southview* does not seem unreasonable.<sup>36</sup> The court in *Lone Star*

26. *Id.* at 529.

27. TEX. BUS. & COMM. CODE ANN. § 9.105(a)(9) (Tex. UCC Supp. 1974).

28. *Montgomery v. Smith*, 145 So. 822, 826 (Ala. 1933); *In re Olson's Estate*, 219 N.W. 401, 403 (Iowa 1928); *Hendricks v. Grant County Bank*, 379 P.2d 693, 696 (Okla. 1963) (certificate of deposit is in effect, a promissory note); *First Nat'l Bank v. Greenville Nat'l Bank*, 84 Tex. 40, 44, 19 S.W. 334 (1892) (certificate of deposit ordinarily defined to be written acknowledgment by bank of receipt of a sum of money which bank promises to pay to depositor).

29. *Citizens State Bank v. O'Leary*, 140 Tex. 345, 350, 167 S.W.2d 719, 721 (Tex. 1942).

30. 512 S.W.2d 817 (Tex. Civ. App.—Corpus Christi 1974, no writ).

31. *Id.* at 819.

32. *Id.* at 820; see TEX. BUS. & COMM. CODE ANN. § 9.102(a)(1) (Tex. UCC Supp. 1974), which provides: "[t]his applies . . . (a) to any transaction . . . which is intended to create a security interest in personal property . . ."

33. TEX. BUS. & COMM. CODE ANN. § 9.104(12) (Tex. UCC Supp. 1974). Professor Gilmore refers to article 9.104 as a "curiously compiled list [defying] rational analysis. In part it merely reiterates, negatively, what has already been said, affirmatively, in § 9-102 on Policy and Scope." 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 10.7, at 312 (1965).

34. *Southview Corp. v. First Nat'l Bank*, 512 S.W.2d 817, 820 (Tex. Civ. App.—Corpus Christi 1974, no writ); TEX. BUS. & COMM. CODE ANN. § 9.105(a)(5) (Tex. UCC Supp. 1974).

35. *Southview Corp. v. First Nat'l Bank*, 512 S.W.2d 817, 820 (Tex. Civ. App.—Corpus Christi 1974, no writ).

36. See O. SPIVAK, SECURED TRANSACTIONS 68 (1963), which states that "[b]y definition, then, instrument would include a negotiable draft, check, certificate of deposit or promissory note." (emphasis added). See generally 1A P. COOGAN, W. HOGAN & D. VAGTS, SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE § 21.02, at

*Life*, however, went one step further in reaching its conclusion that a perfected security interest in an instrument is superior to a bank's equitable right of set-off.<sup>37</sup> By failing to state why a perfected security interest is superior to set-off rights, the court left its decision open to misinterpretation.<sup>38</sup> As an extreme example, the decision might be interpreted as precluding the right of set-off against deposited funds evidenced by certificates of deposit. This interpretation, however, would result in a drastic change in banking law. As stated above, the right of set-off is one accorded in equity by the law merchant due to the parties' mutual debtor-creditor relationship.<sup>39</sup> If, however, the bank has knowledge or notice of facts sufficient to impute knowledge of a special purpose to which deposited funds are to apply, a bailor-bailee relationship exists and no right of set-off is allowed.<sup>40</sup> As a result of the inclusion of certificates of deposit in article 9, it might be argued that the bank has knowledge, imputed by law, that deposited funds are to be used for a special purpose; that is, the funds represented by the certificate may be used by the depositor as debt security. The resultant change in relationship, from debtor-creditor to bailor-bailee, would mean that title to the special deposit would not be passed to the bank.<sup>41</sup> As a result it would be questionable whether the bank could use the funds for the production of income unless possession of the certificate was retained by the bank. Since compensation is rarely paid for that which cannot be used, the altered relationship could mean banks would cease to issue interest bearing certificates of deposit.

Obviously, the court did not intend its decision to be interpreted as changing the relationship between bank and depositor.<sup>42</sup> Indeed, the *Lone Star Life* decision could mean the court intended no modification of present law except that certificates of deposit were "instruments" in which a security

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2175 (1974); 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 10.1-2, at 295-99 and § 12.5, at 377.

37. *First Nat'l Bank v. Lone Star Life Ins. Co.*, 524 S.W.2d 525, 530 (Tex. Civ. App.—Dallas 1975, writ ref'd n.r.e.).

38. The court stated, "We conclude that the rule [of equitable set-off] is still the rule in Texas except for cases like the present, in which it has been displaced by the Code." *Id.* at 529. The difficulty revolves around the court's language of "except for cases like the present." Conceivably the case could be one involving certificates of deposit, or the UCC treatment of the right of set-off, or perfected security interests as opposed to equitable set-off rights.

39. *Van Winkle Gin & Mach. Co. v. Citizens' Bank*, 89 Tex. 147, 153, 33 S.W. 862, 864 (1896); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

40. *Hudnall v. Tyler Bank & Trust Co.*, 458 S.W.2d 183, 186 (Tex. 1970); *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

41. *Martin v. First State Bank*, 490 S.W.2d 208, 211 (Tex. Civ. App.—Amarillo 1973, no writ).

42. *See Cooper v. Union Bank*, 507 P.2d 609, 613 (Cal. 1973) (holding that nothing in the UCC appeared to have changed debtor-creditor relationship between bank and depositor).

interest could be perfected. This intention is manifest if the decision is read in light of UCC Article 1.103, which provides that the principles of law and equity, including law merchant, shall supplement the Code's provision unless specifically displaced by a particular provision.<sup>43</sup> Because set-off is an equitable right, application of article 1.103 could mean that set-off still exists even against certificates of deposit in which a security interest has been perfected.<sup>44</sup> If this interpretation is valid, the rules pertinent to general and special deposits would be applicable to deposits represented by certificates in which a perfected security agreement existed. Thus, if the bank had knowledge of a security interest, no right of set-off could be asserted.<sup>45</sup> If, however, the bank did not know a security interest had been perfected, it could assert a right of set-off only if there had been a change in the bank's position and superior equities had been raised in its favor.<sup>46</sup>

This interpretation of the *Lone Star Life* decision seems reasonable; however, while the court cites article 1.103, it is unclear whether this was the intent of the court. If the decision is interpreted to mean that a perfected security interest is superior to a bank's set-off rights regardless of the bank's knowledge, reliance must be placed on another section of the Code.

It should be noted that article 1.103 provides that the principles of equity will supplement the Code's provisions *unless* displaced by a specific provision. Article 9.201 provides in part: "Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral *and against creditors.*"<sup>47</sup> Of course, in order to assert a right of set-off, a bank must be a creditor. Article 9.201 appears to be the appropriate Code provision regarding the conflicting interests of a bank-creditor and a holder of a perfected security interest. It should be noted that several jurisdictions have recently held that a bank's right of set-off is never superior to a perfected security interest.<sup>48</sup> In *Associates Discount Corp. v. Fidelity Union Trust*,<sup>49</sup> the New Jersey Superior Court held that the right of set-off would exist except in contravention of

43. TEX. BUS. & COMM. CODE ANN. § 1.103 (Tex. UCC 1968).

44. See *General Elec. Supply Co. v. Epcos Constr., Inc.*, 332 F. Supp. 112, 115 (S.D. Tex. 1971). In *Chaq Oil Co. v. Gardner Mach. Corp.*, 500 S.W.2d 877, 878 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) the court states that § 1.103 of the UCC clearly contemplates that pre-Code principles of law and equity shall supplement its own provisions, unless specifically displaced by particular provisions of the Code.

45. *National Indem. Co. v. Spring Branch State Bank*, 162 Tex. 521, 527, 348 S.W.2d 528, 531 (1961).

46. *Id.* at 523, 348 S.W.2d at 529.

47. TEX. BUS. & COMM. CODE ANN. § 9.201 (Tex. UCC 1968) (emphasis added).

48. *Universal C.I.T. Credit Corp. v. Farmers Bank*, 358 F. Supp. 317, 325 (E.D. Mo. 1973); *Associates Discount Corp. v. Fidelity Union Trust Co.*, 268 A.2d 330, 332 (N.J. Super. 1970); *Commercial Discount Corp. v. Milwaukee W. Bank*, 214 N.W.2d 33, 41-42 (Wis. 1974).

49. 268 A.2d 330 (N.J. Super. 1970).



a perfected security interest.<sup>50</sup> The Texas Supreme Court recently held in *Corpus Christi Bank & Trust v. Smith*,<sup>51</sup> that article 9.201 was applicable to secured interests in deposits. The court stated:

Since [the debtor] did have rights in the collateral, it follows that the [secured party's] security agreements were sufficient to give it a security interest in the [deposits], *which is superior to that of general creditors*.<sup>52</sup>

The court's failure to enunciate its reasoning in *Lone Star Life* allows misinterpretation of an area of law in need of precise judicial construction. Many principles of the Uniform Commercial Code are new, consequently, some ambiguity will remain for judicial review. In *Lone Star Life*, the Dallas Court of Civil Appeals chose to concentrate on only one section of the UCC; that is, the court determined whether or not a certificate of deposit was an article 9 "instrument." Once this question was resolved, the court concluded that a perfected security interest in an "instrument" is superior to a bank's equitable right of set-off. No authority, however, was presented supporting this conclusion.

Apparently, in *Lone Star Life*, the court intends that a bank's right of set-off never be asserted against deposits in which a security interest has been perfected. Yet it is unclear if a perfected security interest gains its superiority by means of a specific provision of the UCC, such as article 9.201, or through rules of equity by way of article 1.103. In adopting the UCC, the legislature presented the courts with an affirmative statement of law pertaining to such questions. The court's failure to give adequate consideration to the Uniform Commercial Code results in continued confusion regarding the issue.

*Gregory Neill Jones*

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50. *Id.* at 332. As to art. 9.104(i), excluding the right of set-off from the UCC, the court stated:

This section, however, cannot mean that a general creditor, as the bank is here with respect to the funds in question [general deposit], may abrogate a perfected security interest simply by having a right to and opportunity for a set-off.

*Id.* at 332. As to cases holding that a bank has a right of set-off when it is without knowledge of the trust fund nature of a deposit, the court stated: "However, these cases, if applicable, are subject to the superior authority of the Legislature which, by enacting the Uniform Commercial Code continued a plaintiff's security interest in the . . . collateral." *Id.* at 332.

51. 525 S.W.2d 501 (Tex. 1975).

52. *Id.* at 506 (emphasis added).