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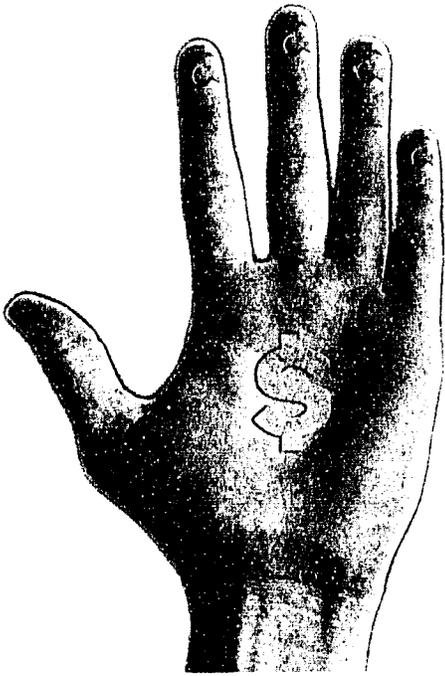
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The **Uniform** Consumer Leases Act Arrives in **Connecticut**

By Ralph J. Rohner

Beginning July 1, 2003, leases of consumer goods in Connecticut will be subject to the Connecticut version of the Uniform Consumer Leases Act (UCLA), promulgated in 2001 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Connecticut enacted a version of the UCLA (hereafter the CT-UCLA) in the spring of 2002¹; it creates a regulatory landscape for long-term leases of consumer goods, comparable to state retail installment sales laws that apply to credit sales.² The uniform Act is the product of a six-year drafting

charges. The Act also provides for administrative oversight and enforcement by the Commissioner of Consumer Protection, and permits aggrieved consumers to recover actual and statutory damages, court costs and attorneys' fees, for certain violations of the Act.

General Background

Leases have become a popular alternative to outright purchases of consumer products, particularly motor vehicles. The lease structure lets the consumer acquire the

lessor sells (or re-leases) the goods to recover their remaining value. Of course, the consumer lessee accrues no ownership interest, or "equity," in the leased goods.

Over the past quarter century, the leasing of consumer goods has gotten legislative attention in several ways. Congress enacted the Consumer Leasing Act (CLA) in 1976; this federal law regulates lease advertising, requires extensive transactional disclosures, and sets a "reasonableness" limitation on charges for default or early termination of a consumer lease.³ In the mid-1980s, NCCUSL and the American Law Institute

The CT-UCLA enhances the transparency of consumer lease transactions by requiring that consumer lessees get adequate information before they commit to a lease, and thereafter at critical points during the lease term.

project by NCCUSL, and Connecticut is the first (and so far the only) state to have adopted the substance of the uniform Act.

The new Act contains provisions on advertising and disclosure; limitations on lease terms and practices; restrictions on certain types of charges; ground rules for default and repossession; and limitations on early termination and excess wear and use

use of goods with a smaller down payment and smaller monthly payments than for a comparable credit sale—reduced cash flow, in other words, because the lease payments need not pay off the full original value of the leased goods, but need only pay for the expected depreciation of the goods over the lease term. When the lease expires, the lessee returns the goods to the lessor and the

promulgated a new Article 2A (Leases) for the Uniform Commercial Code. Article 2A deals with all forms of leases of goods, but its primary emphasis is on *commercial* leases, and it defers to "other law" for the protection of consumer lessees.⁴

These two laws—the federal CLA and UCC Article 2A—set certain parameters for consumer leases: disclosure under the

federal law, and a UCC framework of rules on lease formation, obligations of the parties, and remedies for breach. Both of these laws will continue to apply to consumer leases in Connecticut. What had been lacking, prior to CT-UCLA, was discrete legislation addressing potential substantive abuses affecting consumer lessees. Although a score of states (including Connecticut) had enacted limited legislation on consumer leases, these state laws varied widely in content and scope. NCCUSL believed that a uniform law specifically designed to protect consumer lessees would augment the statutory structures already in place. Thus, the UCLA was drafted to fit between the bookends of the federal CLA and state-law UCC Article 2A, and to complement each of them.

Scope of Coverage

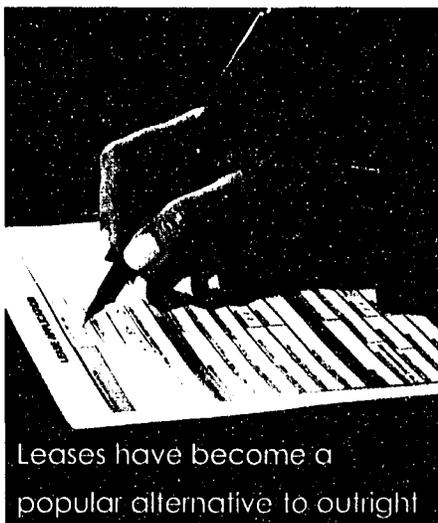
The CT-UCLA applies to a "consumer lease" as defined in the Act.⁵ This must involve tangible goods leased by an individual for consumer purposes. These are baseline criteria. Two quantitative elements must also be satisfied: the total lease obligation may not exceed \$150,000,⁶ and the lease term must be more than four months. Thus, very upscale leases are excluded (on the theory that such transactions don't need consumer protections), and short-term leases, such as weekend car rentals, are also excluded (on the theory that these distinctive transactions are not really alternatives to the purchase of the goods). The "more than four months" criterion also excludes rent-to-own, or hire-purchase, contracts that are renewable week to week or month to month; these types of contracts are typically covered by separate state legislation.⁷

Except for the dollar ceiling, the scope of coverage of the UCLA is very close to that of the federal CLA.⁸ This was a conscious choice, to maintain consistency of coverage for the two consumer protection laws.⁹ A consequence is that leases up to \$25,000 will be covered by both the federal CLA and the CT-UCLA, while leases over \$25,000 fall exclusively under the state statute.

Disclosure and Information Provisions

The CT-UCLA enhances the transparen-

cy of consumer lease transactions by requiring that consumer lessees get adequate information before they commit to a lease, and thereafter at critical points during the lease term. All consumer lease advertising must conform to the federal CLA (even if the consumer lease itself falls outside the scope of the CLA), and cannot be misleading.¹⁰ On request, consumers may get copies of blank lease forms to review before signing.¹¹ At consummation of a lease, the consumer must receive all the disclosures required under the federal CLA (even if the consumer lease itself falls outside the scope of the CLA),¹² plus certain additional infor-



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mation about the lease and insurance related to it.¹³

There is a special notice requirement for guarantors,¹⁴ and requirements for additional information in connection with default, repossession, and imposition of excess wear and use charges. The Act contemplates that consumer lease agreements and disclosures may be in electronic form as well as in a conventional writing.¹⁵

In enacting the UCLA, Connecticut also

repealed (effective July 1, 2002) a provision¹⁶ enacted a few years ago (but that never took effect, due to repeated legislative extension of the effective date) that would have required disclosure in consumer motor vehicle leases of an annualized "lease rate" analogous to the "annual percentage rate" disclosed in consumer credit transactions. This repeal was a recognition that a lease rate disclosure is probably unworkable as a standardized, comparable index of lease cost. This is the conclusion earlier reached by the Federal Reserve Board in 1996, and by the NCCUSL Drafting Committee on the UCLA.¹⁷

Restrictions on Consumer Lease Provisions and Practices

Many potential trouble spots in consumer leases have analogues in consumer credit transactions and in retail installment sales transactions, and it is therefore not surprising that the UCLA replicates restrictions that are commonplace in the consumer credit and retail installment sales world. These include:

- Limitations on choice-of-law and choice-of-forum clauses,¹⁸ so that consumers are not bound by laws, or required to litigate in courts, of jurisdictions far away or having no relationship to the lease transaction.
- A universal standard of "good faith,"¹⁹ and a strong restraint of unconscionable terms or conduct, including the consumer's right to recover attorneys' fees if the consumer successfully asserts unconscionability.²⁰
- Prohibitions of agreements that waive consumer rights; contain a confession of judgment or wage assignment; authorize inappropriate repossessions; or that induce a consumer to enter into a consumer lease based on the promise of the payment of commissions to the consumer for lease referrals.²¹
- Explicit provision that assignees of leases are subject to consumer claims and defenses arising from the lease,²² *i.e.*, no holder in due course protection

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for assignee-holders of lease obligations. However, “[a] lessee’s recovery from a holder under this subsection may not exceed amounts paid by the lessee to all holders under the lease.”²³

The new Act also addresses certain situations that are more unique to leases. The Act:

- authorizes a lease to provide for a security deposit, but limits security interests in the lessee’s property;²⁴
- restrains a lessor’s right to prohibit subleases;²⁵
- regulates the unwinding of a transaction where the lessee’s application is not approved, especially where a motor vehicle has been “spot delivered” pending approval of the customer’s application;²⁶
- limits the circumstances in which the consumer lessee can be charged for substitute—“force-placed”—insurance;²⁷
- bars disclaimers of implied warranties, and preserves implied warranties against remote suppliers.²⁸

The general objective of these provisions is to prevent contractual oppression of consumer lessees, and to level the playing field for customers and merchants whether the financing of consumer goods is through a lease or credit sale.

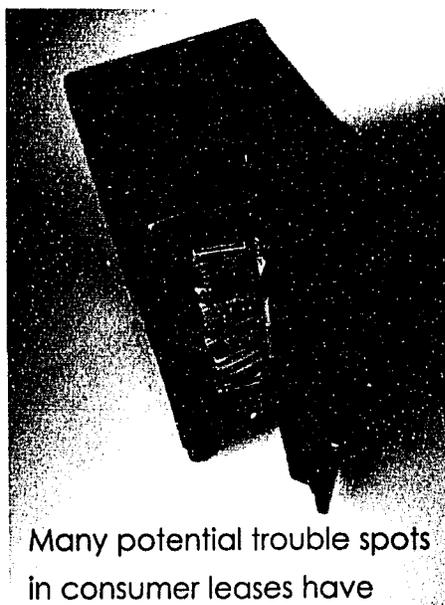
Issues at Lease Termination

When a consumer lease runs to full term, the lessee—especially in an auto lease—may be subject to charges for excess wear and use (EWU), or excess mileage. While the new UCLA, as drafted,²⁹ establishes a process for handling such EWU charges, Connecticut opted to retain a post-termination appraisal procedure that has been on its books for some time.³⁰ This is one of a handful of “nonuniform” amendments in the CT-UCLA.

Consumer leases that terminate ahead of schedule raise a variety of possible problems that are addressed in the new Act. Charges for default and early termination must be reasonable as a form of liquidated damages.³¹ There are explicit limits on late charges.³² A lessee in default is generally

entitled to an opportunity to cure the default before the lessor can sue or repossess.³³ The Act³⁴ also bars lessors from imposing on lessees what is called “gap liability”: this refers to the risk of loss when the leased goods are destroyed and property insurance does not cover the lessee’s remaining obligation under the lease.³⁵ This bar means that lessors can no longer sell separate gap waivers or gap insurance, but must absorb those occasional losses internally.

Two of the biggest issues in the CT-UCLA relate to early termination. One is the question of *electronic* self-help. There are emerging technologies that enable a lessor or creditor to disable leased goods by computer control—by programming starter-



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interrupt features into the goods themselves, or by remote messaging similar to satellite navigation systems. The concern is that these techniques may present dangers if they malfunction and leave the consumer stranded with a nonfunctioning automobile. By

nonuniform amendment the Connecticut Act gives grudging approval to electronic self-help, subject to notice and other protective features for the lessee.³⁶

The Act also addresses the amount of charges that may be imposed when the lessee terminates the lease early.³⁷ The basic test, borrowed from the federal CLA, is that the early termination charge must be “reasonable.” Lessors, especially of motor vehicles, typically require an early terminating lessee to pay the entire remaining “adjusted lease balance,” *i.e.*, the unamortized capitalized cost at the time of early termination—comparable to the unpaid principal balance in a credit transaction—with a credit for the actual realized value of the leased goods when they are resold. These formulas can produce distorted payoff balances if the goods depreciate more than expected or if the estimate of “residual value” was set artificially high.³⁸ The Act sets an outside limit: the amount of early termination charge may not exceed the remaining payments scheduled under the lease. Otherwise, the reasonableness of early termination charges will remain largely for judicial determination.

Enforcement

The Act assigns administrative and enforcement authority to the Commissioner of Consumer Protection, with the powers and remedies available under the state Unfair Trade Practices Act.³⁹ In addition, consumers have private remedies for violations of the Act.⁴⁰ This includes provable actual damages for any violation, and statutory damages up to \$1,000 for certain specified violations, plus court costs and attorneys’ fees. The CT-UCLA also includes a non-uniform provision, to the effect that the Act does not “limit or restrict in any way any rights or remedies which may be available to a lessee or person under any other statutory provisions or under general principles of law and equity.”⁴¹ Consistent with the uniform version of the UCLA, the CT-UCLA provides that if an act or omission violates both the CT-UCLA and other state statutory or common law rules, “the lessee is entitled to the larger of the monetary remedies authorized by this act or the other law,”⁴² effectively limiting the consumer’s ability to cumulate statutory damages for a single act or omission.

Consumer class actions are permitted for actual damages but not for statutory damages.⁴³ Also, a consumer plaintiff may not recover attorneys' fees if the consumer has rejected a pre-suit settlement offer, and then fails to recover in court more than the lessor proffered to settle.⁴⁴ Finally, the CT-UCLA follows the uniform Act in setting different statute-of-limitation triggers for various litigation situations: the statute begins to run either at termination of the lease (for most violations), or at consummation of the lease (for disclosure violations), or on the occurrence of the violation (for class actions). The CT-UCLA sets the statute of limitations period at three years from whichever is the triggering event.⁴⁵ The three-year limitations period does not apply to consumer claims raised by way of recoupment (through counterclaim). However, in an action brought by the holder of the lease.⁴⁶

Conclusion

The drafters of the Uniform Consumer Leases Act, and the Connecticut legislature in enacting the CT-UCLA, believe there should be greater protection for consumer lessees, comparable to protections available to credit buyers. The CT-UCLA is meant to work in tandem with the federal Consumer Leasing Act and UCC Article 2A to that end. The challenge to lessors and lessees, and the courts, is to make the new statute work as well as intended. CL

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Notes

1. Substitute House Bill No. 5248, Connecticut Public Act 02-81 (2002).
2. This article highlights features of the new Act. A more extensive analysis may be found in Ralph J. Rohner, *Leasing Consumer Goods: The Spotlight Shifts to the Uniform Consumer Leases Act*, __ U. CONN. L. REV. ____ (Winter 2003, forthcoming).
3. The federal CLA is implemented by the Federal Reserve Board's Regulation M, 12 C.F.R. Part 213; the regulation was substantially overhauled and updated in 1996.
4. UCC Article 2A has now been enacted in

- virtually all states. One of the last holdouts was Connecticut, which did not adopt Article 2A until 2002, at the same time it was enacting the CT-UCLA. (See Substitute House Bill 5653, Connecticut Public Act 02-131, effective October 1, 2002.) One apparent reason for delayed action on Article 2A in Connecticut was to assure that it contained, or was accompanied by, adequate consumer protections. Thus the CT-UCLA provides the consumer protection missing in UCC Article 2A.
5. CT-UCLA § 2(2).
 6. *Id.* ("excluding residual value, payments for options to renew or purchase and payments to persons other than the holder").
 7. See C.G.S. § 42-240 *et seq.*
 8. The scope of the 1976 federal CLA is capped at leases of no more than \$25,000.
 9. There are some other tweaks in the UCLA coverage rules that are put there precisely to keep the two acts parallel. For example, both the CLA and UCLA are meant to cover professional lessors, and so apply only if the lessor has engaged in at least six consumer leases in the prior or current calendar year.
 10. CT-UCLA § 12.
 11. CT-UCLA § 13.
 12. CT-UCLA § 14.
 13. CT-UCLA §§ 15, 17.
 14. CT-UCLA § 16.
 15. The Act uses the term "record," defined to include information that is "stored in an electronic...medium and is retrievable in perceivable form." CT-UCLA § 2(14). Disclosures may be made electronically only if the consumer has consented, and has the capacity, to receive them in that fashion. Cf. CT-UCLA § 11, on relationship to the federal Electronic Signatures in Global and National Commerce Act.
 16. C.G.S. §§ 42-158b and 42-158c, repealed by CT-UCLA § 50.
 17. Additional statutory provisions applicable to noncommercial motor vehicle lease agreements, found at C.G.S. §§ 42-158a and 42-158d through 42-158g, are repealed by the CT-UCLA effective July 1, 2003, because the substance of these provisions is contained elsewhere in the CT-UCLA.
 18. CT-UCLA § 8.
 19. CT-UCLA § 9.
 20. CT-UCLA § 10.

21. CT-UCLA §§ 7, 19, 26.
22. CT-UCLA § 22(b).
23. *Id.* Cf. C.G.S. § 52-572g.
24. CT-UCLA § 20.
25. CT-UCLA § 23.
26. CT-UCLA § 18.
27. CT-UCLA § 25.
28. CT-UCLA § 27. See also C.G.S. § 42-179 *et seq.*: "lemon law" applies to consumer leases (and purchases) of new motor vehicles.
29. UCLA § 407.
30. C.G.S. §§ 42-270, 42-271.
31. CT-UCLA §§ 21, 32. The UCLA follows the federal CLA in imposing this standard.
32. CT-UCLA § 21(a) and (b).
33. CT-UCLA § 29.
34. CT-UCLA § 28.
35. The Act clarifies how the "gap amount" is calculated, for example, excluding insurance deductibles. CT-UCLA § 28(a).
36. CT-UCLA § 30(d). The CT-UCLA provisions concerning electronic self-help are patterned on provisions found in the Connecticut version of revised UCC Article 9 (see Section 106 of Connecticut Public Act 01-132, to be codified at C.G.S. § 42a-9-609(d)).
37. CT-UCLA § 32.
38. The most provocative court decision to date on early termination charges is *Miller v. Nissan Motors Acceptance Company*, __ F. Supp. ____, 2000 WL 1599244 (E.D. Pa. 2000).
39. CT-UCLA §§ 41, 42.
40. CT-UCLA § 35. Other provisions (§§ 36-40) clarify the scope of these civil liability rules, and establish certain defenses for lessors.
41. CT-UCLA § 6.
42. CT-UCLA § 40(b). Cf. *Jacobs v. Healey Ford-Subaru*, 25 UCC Rep. Serv. 2d 1043, 231 Conn. 707, 652 A.2d 496 (1995): conduct that violates UCC Article 9 and Connecticut's Retail Installment Sales Financing Act (RISFA) could support statutory penalties under both acts.
43. CT-UCLA § 35(d).
44. CT-UCLA § 35(f). The statutory mechanism is more complex than this single-sentence summary.
45. CT-UCLA § 37. This limitation period is longer than that recommended in the uniform version of the UCLA (§ 503: one or two years, depending on trigger).
46. CT-UCLA § 37(d).

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