The New UCC Articles 3 and 4: Impact on Banking Operations

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1. Introduction

A. Purpose and Scope

The first revision of Articles 3 and 4 of the Uniform Commercial Code ("UCC" or the "Code") since those articles were promulgated in the 1950s occurred in July of 1990 when the National Conference of Commissioners on Uniform State Laws ("NCCUSL") and the American Law Institute ("ALI") approved the draft final revision of these UCC articles.1 The purpose of this revision was to resolve ambiguities and deficiencies in the previous text, to make certain substantive changes in the law, and to update the Code to reflect modern technology and business practices.2 While largely evolutionary, these changes are quite significant. It is expected that the revisions will have immediate effect, even in states that have not yet enacted them, as an authoritative statement of the law.3

The scope of Article 3 was expanded in important ways.4 All fully negotiable instruments covered by the previous version remain within the scope of the new Article 3. In addition the definition of "negotiable instrument" at section 3-104 was expanded to include any "unqualified promissory note, check, or cashier's check, or any promissory note, check, or cashier's check payable on demand or on demand of another, ..." specifically including adjustable interest rate instruments, instruments containing the notice required by the FTC holder in due course rule or federal law, non-negotiable notes, and checks which are not payable to order or bearer.5 The latter are not only subject to Article 3; they are treated as negotiable instruments through the use of the traditional words of negotiability.6

In effect the new Article 3 expands both the scope of Article 3 (to cover a range of previously negotiable instruments, such as checks not payable to order or bearer) and the concept of negotiability (to include, for example, adjustable interest rate instruments). For example as previously noted, a negotiable instrument is not rendered nonnegotiable (by reason of being conditional) merely because it is limited to payment from a specified fund.7 As a result a non-negotiable note can be negotiable.

A promise or order other than a check can be made nonnegotiable, however, by the addition of a "confiscatory statement" so that the promise or order is not negotiable or is not an instrument governed by Article 3.8 In addition the Official Comments to Revised section 3-104 specifically permit the parties to "contract into" Article 3 for instruments not otherwise covered.9 The result is an expanded range of instruments subject to the rules governing negotiability and potentially creating a holder in due course, plus coverage of an expanded range of other instruments not subject to the holder in due course rules yet otherwise governed by Article 3.

For the first time there are specific definitions of "cashier's check" and "teller's check"; ordinary money orders are placed within the definition of "check." Among other things this means that money orders will be treated as ordinary checks, and not as the equivalent of a cashier's check, for purposes of such things as stopping payment.10 Revised Article 3 also classifies the coverage of traveler's checks.11

B. Overview of Significant Changes - Article 3

A. Limitation Periods

Revised section 3-118 provides a series of limitation periods for bringing actions under Article 3. For example, an action to enforce a term note must be brought within six years from the due date or the date of acceleration.12 An action on a demand note must be brought within six years after demand; in the absence of demand, suit is barred if there has been no payment of principal or interest for a continuous period of ten years.13 An action to enforce an unaccepted draft must be brought within six years after dishonor or within ten years after the date of the draft, whichever comes first.14 An accepted draft is subject to a six year limitation period.15 An action to enforce a cashier's check, teller's check, certified check, or cashier's check must be brought within six years after demand for payment.16 Certificates of deposit are subject to a similar six year period.17 Other actions under Article 3, including an action for breach of warranty or conversion, are governed by a three year limitation period.18

B. Breach of Fiduciary Duty

Revised Article 3-307 governs instruments payable to and taken from a corporate officer, trustee, or other fiduciary where that status is known.19 If an instrument is payable to a corporation, trust, or fiduciary, the transferee will have notice of a breach of fiduciary duty if the instrument is taken in payment of or as security for a personal debt known to be such by the transferee from a corporate officer, trustee, or other fiduciary or in a transaction otherwise known to benefit the fiduciary personally or if the instrument is deposited to a nonfiduciary account (including, of course, a personal account of the corporate representative, trustee, or other fiduciary).20 The fact that an instrument is drawn by a corporation or a fiduciary acting as such does not give notice of any breach of duty, even if the instrument is made payable to the fiduciary in an individual capacity.21 However if the instrument is drawn by the corporation or fiduciary to the transferee as payee, the transferee is on notice of a breach of fiduciary duty if it is taken in payment of or as security for a personal debt the fiduciary known to be such by the transferee or in a transaction known to benefit the fiduciary personally or is deposited to a nonfiduciary account. Therefore, for example, a bank accepting a check drawn on a corporate account and payable to the bank, for deposit to a personal account of a known corporate representative, takes with notice

1. Uniform Commercial Code. The UCC is an Act of Congress (Act of July 26, 1955, 79 Stat. 608) that adopted and revised the Uniform Negotiable Instruments Law of 1896. Uniform Commercial Code (Uniform Law Commission 1949), the "Code," was adopted by many states. The most recent version is the Uniform Commercial Code (4th ed. 2007). Subsequent revisions were not adopted, but states may enact revised versions. The Revised Article 3 and 4 draft were adopted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") and American Law Institute ("ALI") in 1985. The revised articles were approved by the American Bar Association ("ABA") in 1990, and the new articles were prepared by the ABA's Task Force on Secs. 3 and 4. They were submitted to the ABA's Governing Committee on Consumer Finance Law for review in 1992.

2. Parts 3-23 of the article provide a complete analysis of the 1960 UCC in in its various forms.

3. Revised Article 3-104. Although the new Article 3 incorporates the provisions of Article 3 of the 1960 UCC, it otherwise does not apply to instruments of such kind as are specifically covered in a preceding section of such kind. Revised Article 3-104.

4. Revised Article 3-104.

5. Revised Article 3-104.

6. Revised Article 3-104.

7. Revised Article 3-104.

8. Revised Article 3-104.

9. Revised Article 3-104.

10. Revised Article 3-104. An ordinary money order issued within the United States by a member of a money order association that is not a bank is a negotiable instrument entitled by Article 3. Revised Article 3-104.

11. Revised Article 3-104.

12. Revised Article 3-104. Revised Article 3-104.

13. Revised Article 3-104.

14. Revised Article 3-104. Revised Article 3-104.

15. Revised Article 3-104.

16. Revised Article 3-104. Revised Article 3-104.

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34. Revised Article 3-104. Revised Article 3-104.

35. Revised Article 3-104. Revised Article 3-104.
of a possible breach of fiduciary duty and cannot be a holder in due course.28
C. Payment on a Forged Indorsement
A payee of a check that has been paid on a forged indorsement (after the payee has lost possession of the check) is not in the same cause of action against the depository or payor bank for conversion.29 A payee who did not receive any notice of indorsement action for conversion.30 Nor does the maker, drawer, or acceptor have an action for conversion of an instrument paid on a forged indorsement.31 A payee who has an action for conversion as noted above does not have a right of action against the drawer or maker on the underlying obligation.32 Regarding the relationship between a custo-
mer and the payor bank that pays on a forged indorsement, see infra Part IX.
D. Personal Liability for Representative Capacity
The rules governing personal liability for a signature in a representative capacity were generally restated, but with two significant changes: Revised section 3-402(c) provides that a representative capacity always establishes that there was no intent to create liability,
except as against a holder in due course, and that an authorized signature of a representative on behalf of the principal on a check does not result in personal liability of the representative even if the representative capacity is not indicated.33
E. Lack of a Required Signature
If an instrument requires more than one signature to constitute the signature of an organization, and one of the required signa-
tures is missing, the instrument is treated as if it was drawn with an unauthorized signature.34
F. Forgery by an Employee
Revised section 3-405 contains a new provision that makes employers responsible for forgeries of the employee's instruments by employees in certain circumstances. If an employer has entrusted the employee "with responsibility with respect to the instrument,..." then any forgery of an indorsement by the employee will be treated as an effective indorsement.35 Most of the relevant terms in this provision (including "responsibility" with respect to the instrument) are defined at subsection 3-404(a).
However, if the bank (or other party) paying the instrument or taking it for deposit failed to use ordinary care and that failure substantially contributed to the loss, the bank is liable for the loss to the extent that the failure contributed to the loss.36 For example, if a depositary bank allows the employee to deposit checks with forged indorsements in a "wholly" corporate account established for this purpose, without requiring proper documentation for opening a corporate account, the bank's negligence in allowing an employee to deposit checks without indorsement contributed to the loss. See also Revised section 3-307 (notice of fidelity duty), discussed supra at Part III.B.
G. Breach of Warranty: Restitution
The transfer warranties have been moved to Revised section 3-416; the present warranties are provided separately at Revised section 3-417. A new provision permits a person sued by the drawer for breach of warranty to assert a defense based on the drawer's inability to assert the forgery or alteration against the drawer because of a precision under Revised sections 3-406 or 4-406.37
Revised section 3-418 is clarified to pro-
vide that a drawer (called the "payor bank," in Article 4) who has paid final payment may have to recoup the amount and recover in restitution. This is a codification of the common law rule of restitution and represents a clarification of that rule as a supplement to the final payment rules in Article 4. There is a somewhat similar but slightly more narrow supplement to the rule that a bank may be required to make final payment or dishonor before its midnight deadline, at Revised section 4-302(b).38
H. Dishonor of a Cashier's Check
A new provision at Revised section 3-411 seeks to resolve confusion over the ability of a payor bank to refuse payment of a cashier's check or similar instrument.39 Un-
like the drawer of a check or personal money order (signed by the cus-
tomer or purchaser as drawer), the bank customer who presents the cashier's check (sometimes called the "remitter") appar-
ently because he or she typically remits the instrument in payment of an obligation) does not sign as drawer and has no right to stop payment or to order the bank to disburse,40 and if the bank wrongfully refuses to pay a cashier's check or similar instrument (e.g., on grounds of insufficient funds or non-payment order), the bank may be liable for expenses, loss of interest and consequential damages. However, Revised section 3-411 precludes recovery of legal costs or conse-
quential damages from the bank if the check is refused payment because it has suspended payments, the bank itself has a defense reasonably believed to be good against the holder, there was doubt as to the identity of the holder, or if payment is prohibited by law.41 While the bank has apparently per-
mitted a payor bank to refuse payment of its own cashier's checks, the effect is to allow the bank to refuse payment in any of the four circumstances without risk of liability for the cost of opposing counsel fees or consequential damages.42
I. Lost or Stolen Bank Checks
Another problem that was addressed in the revisions relates to alteration of a previously uncashed check. Under Revised section 3-413, if an ordinary check is certified (or if a draft is "accepted") for a certain amount and is then endorsed (by the holder in due course), a forged endorsement (by the holder in due course, there is a two-pronged rule to allocate the restorable loss.43
J. Alteration of a Certified Check
Another issue that was addressed in the revisions relates to alteration of a previously uncashed check. Under Revised section 3-413, if an ordinary check is certified (or if a draft is "accepted") for a certain amount and is then endorsed (by the holder in due course), a forged endorsement (by the holder in due course, there is a two-pronged rule to allocate the restorable loss.43
K. The certification (or acceptance) "states the amount certified" (or accepted), the obligation of the certifying bank (or acceptor) is limited to that amount. If, on the other hand, the certification (or acceptance) does not state an amount, and the amount is then raised and the instrument is negotiated to a holder in due course, the certifying bank (or acceptor) may be liable for the amount of the instrument (as altered) at the time it is taken by the holder.44
I. Suretyship and Accommodation Parties

The rules governing the rights and liabilities of accommodation parties are combined and clarified at Revised Article 3-419.29

Among other things, these rules specify that an instrument is enforceable against the party to whom it is payable until the later of whether he or she received the consideration.29

Companion revisions were made at Revised Article 3-405, dealing with discharge of insiders for impairment of collateral and other action. These revisions provide for discharge of liability of the surety by an extension of the due date or other material modification of the obligation, or an impairment of collateral by the creditor without consent of the surety, notwithstanding a reservation of rights in the instrument. However, in these circumstances there is no discharge, unless the creditor knew or had notice of the accommodation, there is no discharge if the surety has consented to the subject event or if the surety has signed a written waiver of discharge.29 and any discharge is only to the extent of liability.29

II. Overview of Significant Changes -- Article 4

A. Definitions and Basic Concepts

1. Holder Status of Depository Bank

Revised Article 4-205 permits a depository bank to be a holder (and therefore potentially a drawee in the course of even) it takes without endorsement by the customer (the depositor) is a holder of the item at the time of deposit.59 These changes are particularly important in view of the potential for loss resulting from the required recordation of availability under federal Regulation CC, e.g., the bank may have had to pay out uncollated funds under federal law and in such case holder in due course status may enhance the bank's ability to recover from the drawer or indorser. If the bank itself then negotiates the item, a pay-on-demand bank should not be treated as lack of indorsement. There is a warranty under Section 4-205(b) that later takes and payors may rely upon.59

Also, in UC C Article 1, an addition to Revised Article 3-207(2) provides that the rules on reservation of rights in an instrument (such as "paid under protest") do not apply to an accord and satisfaction.62

2. "Account"; "Hosm"; "Bank"

The definition of "account" at Revised Article 3-104(a)(1) has been clarified to include any "depository" or credit account, including a "demand, time, savings, pass-book, share draft, or like account" other than a certificate of deposit.63 These changes are particularly important in view of the potential for loss resulting from the required recordation of availability under federal Regulation CC, e.g., the bank may have had to pay out uncollated funds under federal law and in such case holder in due course status may enhance the bank's ability to recover from the drawer or indorser. If the bank itself then negotiates the item, a pay-on-demand bank should not be treated as lack of indorsement. There is a warranty under Section 4-205(b) that later takes and payors may rely upon.64

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3. Payable-Through Drafts

The provisions on "payable-on" drafts at Revised Article 4-106 have been completely rewritten. The new language provides for the notion that an instrument is "payable-through" a designated bank, that bank is a collecting bank, and the bank must and can only make presentment and is not authorized to make payment on its own authority on a "payable-through" bank is not liable as a payor for failure to meet the midn deutsch line. In a charge directed at some poorly reasoned cases,66 new subsection 4-106(c) provides for the form of a non-negotiable drawer and it is unclear whether a bank named in the draft is a co-drawer or a collecting bank, the bank is a collecting bank.

There are two alternative provisions governing items "payable at" a bank, designed to delineate the dividing line between payor and collecting banks.

B. Automation of the Payments System

1. Check Truncation and Electronic Payments

The Article 4 revisions specifically recognize and authorize check truncation and electronic payments.38 There is a new definition of "Electronic presentment agreement" and authority to have such an agreement to govern "scheduling, presentment, payment, dishonor, and other matters..."732

2. The Process of Posting

The 1990 revisions delete the process of posting as a means of making final payment.73 This revision effectively adopted the result of the Federal Reserve Bank of New York working group . . . that the information is correctly encoded.74 In effect this imposes a strict liability standard (with accompanying poential liability) on a depository bank (or any other party) that encodes items.75 In addition, in truncation arrangements the party who retains the item warrants to subsequent parties that the retention and electronic presentation are in conformity with the underlying agreement.38

4. Postdated checks

Under revised Article 4, banks are protected against liability for paying a postdated item before its payable date, unless the customer has given prior notice to the bank.76 The notice is subject to the same kinds of requirements as a stop payment order.77 If the customer gives the bank such a notice and the bank electronically pays the item, the bank is liable for actual damages, including damages for resultant wrongful dishonor of other items.78 This resolves uncertainties under prior law.79

The rationale for protecting the bank, by generally relieving the bank of liability for paying a postdated check, is to encourage automated processing by allowing the system to rely on MICR encoded information. The wide availability of such information in this area, in which the courts and parties have been forced to focus on relatively subtle or technical aspects of the process of posting, support the decision as an improvement in the law.80

3. Encoding warranties

Revised section 4-209 provides that any party who encodes information "on or with respect to an item in question warrants to any subsequent collecting bank and to any person paying on such item that the information is correctly encoded.81 In effect this imposes a strict liability standard (with accompanying poential liability) on a depository bank (or any other party) that encodes items.82 In addition, in truncation arrangements the party who retains the item warrants to subsequent parties that the retention and electronic presentation are in conformity with the underlying agreement.38

5. Dishonor of NSF Items

Section 4-500(a) is a new provision that permits a payor bank to base its decision to dishonor a non-sufficient funds ("NSF") check based on the notice of the customer's account balance at "any time between..."
the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice of dishonor ... 79 Furthermore, "too many" is an inadequate determination need to be made.\(^\text{80}\) In effect, this permits a payor bank to make a decision to dishonor an item based on the status of its check prior to its review of 4-206(c) to 4-206(f) to 4-206(g) and to proceed with implementation of the decision to dishonor the item even if its subsequent deposit is made and the insufficient funds are credited before the item has been returned.\(^\text{81}\) However, if the bank makes a reauthorization as to the account balance it will be bound by this second determination.\(^\text{82}\)

6. Bank Statements

Revised section 4-406 was significantly rewritten to specifically permit check retention (or truncation) by authorizing the payor bank to decline the contents of a statement containing stipulated information in lieu of returning the customer's canceled checks.\(^\text{83}\) It also imposes certain retention or record-keeping requirements on the payor banks that do not return the cancelled checks for check, requiring that the bank retain the relevant information for a period of seven years and that it make the item (or a legible copy of the item) available to the customer within a reasonable time upon request.\(^\text{84}\)

7. Computer Breakdown

New subsection 4-109(b) makes it clear that a delay caused by a failure of computer or other equipment is excusable and does not constitute a violation of the midnight deadline or other time limit prescribed by Article 4.\(^\text{85}\) This applies to both payor and collected banks.\(^\text{86}\)

8. Sight Examination of Checks

Consistent with the other revisions noted above, revised section 3-103(a)(7) adds a "reasonable" for a business (including a bank) as "adequate meaning of reasonable commercial standards, prevailing in the area in which the business is located."\(^\text{87}\) This definition also specifically a bank that uses an instrument "for processing for collection or payment by automated means" does not have to sight examine every item if the "failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonable from accepting common banking usage.\(^\text{88}\) To facilitate automatic processing and may have significant implications in terms of a bank's liability for payment of forged or altered items under Revised section 4-406, as discussed infra at Parts III.C.2. and VIII.

9. Other Check Processing Rules

1. Missing Indorsements

As noted supra at Part III.A.1, revised section 4-205 provides that a payor bank qualifies as the holder of an item for deposit even if the depositor has not indorsed the item.\(^\text{89}\) Under Old section 4-205 the payor bank had authority to return a nonpaying negotiable instrument to an item taken for deposit but some courts had held it was not a holder if it failed to do so.\(^\text{90}\) Under the change it will be irrelevant whether the payor bank actually supplies the missing indorsement.\(^\text{91}\) Even without an in
5. Stop Payment Orders

Under Revised section 4-403(a) "any person authorized to draw on the account" may stop payment on any item drawn on that account. The 14 day and six month limitation periods for oral and written orders are reordered but essentially remain the same. 4-107. The revision added language clarifying that recoverable losses for violation of a stop payment order may include damages for dishonor of subsequent items. 4-402.

A new Comment 1 to Revised section 4-403 states that the customer's stop payment order must provide sufficient information to enable the bank to identify the item, along with reasonable certainty using existing technology. Money orders are defined as checks at Revised section 3-104(b), clarifying that they are subject to a stop payment order by the purchaser. Compare supra Part III.B, regarding cashier's checks.

IV. Operational Issues Relating to the Enforceability of Instruments

A. Determining Who Is Entitled to Payment

Several new provisions in Revised Article 3 involve practical issues that banking institutions must deal with in a regular basis. For example, Revised section 3-1104(a) provides that "an instrument is payable to the person intended by the signer even if that person is not the person identified as the "payee" by the instrument" by different factors. Thus where a check is payable to "John Smith," and more than one person of that name seeks payment, the check is payable to the party intended by the drawer. 3-107. However, if the check is issued to someone else, posing as the intended payee (an "imposter payee"), the imposter's income statements will be in favor of any other party who, "in good faith, pays the instrument or takes it for value or for collection." 3-107. There is a similar rule for instruments payable to "bearer payees." 3-107.

If an instrument is payable to multiple payees in the alternative (e.g., "John or Jane Smith"), it may be negotiated or enforced if indorsed by either of such parties. 3-107. If an instrument is payable to multiple payees in the alternative (e.g., "John" and "Jane Smith"), it may be negotiated, paid, or enforced only if indorsed by all such parties. 3-107. If the instrument is ambiguous in this regard, it is payable to "John and Jane Smith," it is deemed to be payable to the named persons in the alternative. 3-107.

B. Determining Who Is Entitled to Payment: Instruments Payable to Account Numbers, Ambigous, Imposter, and Multiple Payees

If an instrument is payable only to an account number, it is payable to the person to whom that account is payable. 3-107. It is payable to an account number and a person, and if the instrument is not payable to the account number, it is payable to the person identified as the payee by the instrument. 3-107. Whether a person is entitled to the proceeds of an instrument is determined by the instrument, by the terms of the contract, or by the election of the holder. 3-107.

Revised section 3-119 provides that a party is liable to an instrument to give notice of an action against that party to any third party who may also be liable (e.g., a prior indorser). Thus the third party may give similar notice to other persons who may be similarly liable, and the notice is of the same type as the notice required to be given to the holder. 3-107. The cases state that (1) the person so notified may come in and assert a defense and (2) in the absence of such defense the person will be bound by the outcome as regards their debtor's liability, the person so notified will be bound by the results of that action.

II. Indorsements

A. Types of Indorsements

Four types of indorsements are recognized in the Revised Article 3: blank indorsements, special indorsements, negotiable indorsements, and restrictive indorsements. 3-107. A blank indorsement occurs when the indorser merely signs the indorsee's name without any additional language; this will convert an "order" instrument into a negotiable instrument (a blank indorsement on a note is called "endorsing or indorsing" into "bearer") subject to negotiation by transfer of possession alone. 3-107.

A special indorsement is one that makes the instrument payable to a particular party, thereby retaining the "order" character of the instrument and requiring a subsequent indorsement by a named party as a prerequisite to subsequent negotiation of the instrument. 3-107. An anonymous indorsement is one by a party outside the chain of possession of the instrument; by one not a holder. The effect is to make such a party liable as an indorser and to create a presumption of acceptance status.

A restrictive indorsement is not effective to restrict payment to a specified party, but may qualify or restrict payment to a specified class of transactions, for example by using words such as "for deposit," "for collection," or "pay any bank" (all designed in the context of the relationship to the banking system). 3-107. Any person other than a bank who purchases a instrument so restricted may be guilty of conversion, but conversion is not guilty of conversion if it pays the instrument in a manner inconsistent with the restrictive indorsement.
as to which banks are regulated by the Federal Reserve System. As noted supra at Part II.B, the Federal Reserve Board (and the Federal Reserve banks) are the primary regulators of the banking system.

VI. Supervisory and Examinations

The Federal Reserve Bank of New York is responsible for conducting on-site examinations of insured banks, and the Federal Reserve Board is responsible for reviewing these examinations.

VII. Legal Requirements

The Federal Reserve Act and the Federal Reserve Board rules are the primary legal requirements governing the banking system. These requirements govern such matters as the establishment and operation of banks, the conduct of banking activities, and the solvency of banks.

VIII. Conclusion

The banking system in the United States is subject to extensive regulation and supervision by the Federal Reserve System, the Federal Deposit Insurance Corporation, and other federal and state agencies. The primary purposes of this regulation are to maintain the stability of the banking system, ensure the safety and soundness of banks, and protect the interests of depositors and consumers.
A word more about the imposter and fictitious payee and padded payroll rules at Revised sections 3-404 and 3-405. The imposter and fictitious payee is an instrument or an instrument it issues an instrument to an imposter payee16 thereby authenticates the impostor’s indorsement as against a person who in good faith purchased or collected the instrument by value or collection. While this does not create liability for anyone who would otherwise be liable on the instrument, it precludes the issuer of the instrument from defending against liability on grounds of an unconscionable indorsement. In effect, the issuer who is duped by an imposter cannot shift the resulting loss to an innocent holder or payee of the instrument. There is a similar rule in Revised Article 3 covering instruments indorsed to fictitious or improperly issuers to a real payee.17

Note that revised sections 3-404, 3-405, 3-406, and 4-406 are consistent in that all preclude a party, whose failure to exercise care (as defined therein) contributed to the loss from a forgery for some cases an alternative party to an unconscionable negligent party who took or paid the instrument for value and in good faith. In all four instances such a preclusion can be mitigated by a showing that the person who took or paid the instrument failed to exercise ordinary care in doing so, in which case, if that failure contributed to the loss, liability will be apportioned on the basis of comparative negligence.18

In addition, a bank customer cannot recoup for improper payment of an item where that payment discharged a lawful debt of the customer.19 Finally, where a person signs an instrument only as an "accommodation20 to another party, that person is liable only in the extent of that person’s signature, except that the person may have the benefit of certain "accommodation party" defenses that will affect that liability. 21

B. Nature of Liability of Indorsers and Drawers

Drawers and indorsers are secondarily liable, in the sense that each engages to pay the instrument, but only if someone else does not.22 Generally this and any other conditions, or prerequisites to liability, are similar for both drawers and indorsers, although the ramifications of the failure of a condition are quite different, as it is more difficult for a drawer to be discharged as a result of a failure of a condition than it is for an indorser to be discharged in the same circumstances.23

Generally there are three prerequisites or conditions necessary to enforce the liability of the indorser: (1) the instrument must be properly presented (to the maker or drawer/payee), (2) it must be dishonored by nonpayment at maturity, and (3) the indorse must be given proper notice of the dishonor. The drawer of a draft is obligated to pay the draft upon its proper presentation and dishonor.

Dishonor is defined at Revised section 3-502 to require prior presentation and non-payment (and, in the case of an item, indorsement by the payor bank within its midnight deadline and the rules governing payor bank accountability at Revised sections 4-301 and 4-302).24 A prerequisite to non-payment for checks is provided at Revised sections 3-414(e) (for purposes of the liability of drawers) and 3-4150 (for purposes of the liability of indorsers): an indorser is discharged from liability if the check is not presented for collection or payment within 30 days of the indorsement;25 the drawer may be discharged if the check is not presented for collection or payment within 30 days of its date, but only if the drawer/payee bank suspends payments after that 30 day period and the drawer is deprived of funds to pay the check as a result.26 Similarly, in order to hold an indorser liable, notice of dishonor must be given within certain time limits as a prerequisite to liability of the indorser and in some cases the drawer must be given notice of dishonor as well. A payor or collecting bank has a duty to give notice of dishonor within its midnight deadline (the payor bank must do so by returning the item itself, unless the item is unavailable for return due, e.g., to a transportation agreement). The indorser must give notice of dishonor within 30 days after receiving notice of the dishonor.27 Presentment, dishonor, and notice of dishoner may be excused or waived,28 but otherwise are prerequisites to the liability of indorsers and some drawers.29 Failure to give notice of dishonor within the time specified will discharge liability.30 The revision makes it easier for nonbank holders to preserve liability by increasing the time for presentation (from seven to 30 days) and the time for giving notice of dishonor (raised from three to 30 days), but as before the liability of the drawer generally will be discharged only if the drawer has suspended payments and this causes the loss.31

C. Impact on the Underlying Obligation

Revised section 3-310 replaces old section 3-802, generally preserving the old rule but providing greater specificity. As before, if a certified check, cashier’s check, or teller’s check32 is taken for an obligation, the obligation is discharged as if paid in cash.33 If an unsecured (i.e. personal) check is taken for an obligation, the obligation is "substituted" in the hands of the indorser and is paid, certified, or dishonored.34 If the check is paid or certified, this discharges the liability of the indorser up to the extent of the amount of the check.35 If an uncertified check is taken for an obligation, and the check is dishonored,36 then suspension of the obligation terminates and the person who took the check in payment (the obligee on the underlying obligation) may enforce either the obligation for the liabilities on the instrument,37 if that obligee is the person to whom the obligation is owed and the person entitled to enforce the instrument (as defined) on a drawee or a payor bank or a depositary or intermediary bank, and it has met the conditions to invoke the liability of indorsers, it may proceed to collect from the indorser in the hands of the payor bank or intermediary bank. Alternatively (again assuming the bank has retained possession of the instrument and a holder is or otherwise entitled to enforce the instrument) the depository or intermediary bank may seek recovery from the drawer as a result of the drawer’s liabilities on the instrument, or may charge-back the item to its customer account and, if this results in a debit balance (commonly called an "overdraft"), that debit balance be recovered from the customer. These matters will be discussed further infra at Part VIII B.

D. Impact of Liability on the Instrument On Rights of Collecting Banks

As noted, in limited circumstances if a check has not been presented for payment or collection within 30 days of its date, the time may discharge the liability.38 If the instrument is not presented or collection initiated within 30 days of its date, the indorser will be discharged.39 Any of these time periods may affect the ability of a collecting bank to collect an instrument (or takes or not for deposit or collection).40 While a collecting bank normally will qualify as a holder in due course,41 if the instrument is overdue or liability has been discharged by the lapse of time, this may preclude holder in due course status and impair the ability of the bank to collect the instrument.42 However, this does not affect the ability of the collecting bank to charge back the dishonored item to the customer’s account.43

E. Impact of Secondary Liability on Liability of the Indorser with Respect to the Underlying Obligation

There is some misleading wording in Revised Article 3 at section 3-310(b)(1). That section was taken from Old section 3-802(b)(6), which read in part: "Discharge of the underlying obligor on the instrument also discharges him on the obligation." Revised section 3-310(b)(1) was intended to carry that rule forward into the new Article 3, but the revision states only that "[p]ayment or certification of the check results in discharge of the obligation to the extent of the amount of the check." The negative inference, apparently not intended, is that a bank’s taking of an instrument on the instrument by means other than payment or certification does not discharge liability for the underlying obligation. For example, suppose that a check is taken from an indorser for payment of an underlying obligation (e.g., a bank loan). This could occur where a bank’s borrower makes payment on an instrument indorsed to the bank as check drawn to the borrower/indorser by a third party. If, perhaps due to a clerical error or misplacement of the check, the bank does not present the check or commence collection for more than 30 days, the indorser will be discharged of liability on the instrument, but the collectibility on the instrument on the underlying obligation would also discharge the borrower’s liability for the unliability.
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dering obligation.216 Revised section 3-302 apparently intended to provide the same result, but the plain language of Revised section 3-310(b)(1) indicates only that payment (or certification) of the instrument will discharge liability on the underlying obligation. Revised section 3-302(b)(3) reinforces this by providing a rule like that of Old section 3-902 in the last sentence. Therefore, if the present case scenario described above, the bank may be able to argue that, under the plain meaning of the Revised Article 3, discharge of an indorser under section 3-415(e) does not discharge the indorser's liability on the underlying obligation (in this hypothec), the bank loans excepted, given no reason for a charge, such a charge is not found; other law through section 1-103 should provide a discharge.

VII. Payment & Dishonor

A. The Concept of Properly Payable

If a check is presented to the drawer/payee bank for immediate payment over the counter, the bank should first ascertain whether the item is properly payable. The bank will have authority to charge the check to its customer account (the account of the drawer) only if the item is properly payable.217 If the item is not properly payable, the bank cannot charge its customer account, and will suffer any loss resulting from uncollectibility of the instrument that cannot be otherwise shifted (such as by warranty or preclusion).218

An item is properly payable "if it is authorized by the customer and in accordance with any agreement between the customer and the bank."219 While this definition recognizes that most of the rules in Articles 3 and 4 are governed by the concept of "properly payable," the rules are subject to variation by agreement.220 In most instances an item will have to conform to the requirements of Articles 3 and 4 in order to be properly payable.221 Hence, before making payment the drawer/payee bank needs to be sure that the item being presented for payment has been properly prepared, indorsed, and presented pursuant to the rules discussed in this article.222 Conversely, refusal to pay an item that is improperly payable under Revised section 4-401 may make the bank liable for wrongful dishonor under Revised section 4-402. This requires that bank staff be trained to recognize the requirements of Articles 3 and 4 and to avoid wrongful dishonor of such items.223

A few examples will serve to illustrate the concepts of properly payable and wrongful dishonor. If the holder of a check, properly executed and indorsed, takes the check to the drawer/payee bank and requests that it be certified, the bank may refuse and this refusal will not constitute dishonor, because a refusal of certification is not defined as a dishonor.224 Also because the Code explicitly so states.225

In contrast if such a check is presented for payment, and the drawer/payee bank refuses, this constitutes dishonor.226 If the check was properly payable that bank will be liable for wrongful dishonor, and the bank will be liable for resulting damages.227 On the other hand, if the bank pays an item that is not properly payable, it may be liable for wrongful dishonor on the customer's account for the amount of the item and therefore may suffer any resulting losses.

In order to help the bank determine which items are properly payable, Article 3 permits the bank to require that the instrument be exhibited for inspection unless otherwise agreed, and that the person making presentation provide "reasonable identification" and sign a receipt, and (if full payment is made) surrender the instrument.228 If the bank imposes these requirements and they are not met, the bank's refusal to pay does not constitute dishonor. Similarly, if the instrument lacks a necessary indorsement, or otherwise fails to comply with the agreement of the parties, the bank may refuse to pay the instrument.229 Revised section 3-403 of Articles 3 and 4 or other applicable law, refusal to pay will not constitute dishonor.230

B. UCC Time Limitations

Time periods may or may not affect a payer bank's obligation to pay its instrument. Usually, under section 3-403 of the UCC, a bank is required to pay its item within a reasonable time.231 Revised section 3-118 provides a statute of limitations that requires commencement of action to collect an uncoupled draft such as a check within three years after dishonor or within ten years of the date of the instrument, whichever comes first. After such time the claim is barred, but this does not mean the item ceases to be properly payable. The statute of limitations at section 3-118 merely bars the bank's right to pay the item or charge it customer's account. Similarly, Revised section 4-404 provides that a payer bank has no obligation to honor a check (other than a certified check) more than six months old, but this does not prevent a bank from paying such a check in good faith or make such payment improper.232

Under Revised Article 3, for purposes of holding in due course, a check becomes "overdue" (or "stale") 90 days after its date.233 This is up to 20 days under Old Article 3.234 If a bank or other party takes such an instrument, it takes with notice that it is overdue, and cannot be held in due course.235 Again, however, this does not prevent the instrument from being properly payable; while the resultant lack of holder in due course status may be fatal if a collecting bank seeks to collect a dishonored check by enforcing the liability of parties to the instrument, it does not prevent the drawer/payee bank from paying the drawer's account as a properly payable item if that is done in good faith and in a manner not inconsistent with an agreement.

C. Wrongful Dishonor

Under Revised section 4-402(a) a dishonor of a properly payable item is wrongful dishonor, and the bank may be held liable for actual damages caused to its customer at a result.236 Absent agreement to the contrary the bank may dishonor any item drawn on insufficient funds, even if it is otherwise properly payable. If an item is not properly payable there can be no wrongful dishonor, even if the bank stamps the wrongfully dishonored item as the face of the check.237 The bank's liability for wrongful dishonor or its limit to actual damages proved. As noted previously this rejects the old "trader" rule, placing banks liable for damages per se on grounds of a presumption that the customer's reputation was injured by the dishonor.238 However, the actual damages may include compensatory damages, which are to say, unless the parties have made an agreement to the contrary.239

Cases like Show v. Union Bank & Trust Co.240 (holding that wrongful dishonor is a "tortious breach of a status-based duty of care") are essentially restated under the revised article. While Revised Article 4 does not specifically erect this line of reasoning, the very clear statutory remedy at section 4-402 does reflect alternative therapeutic language to UCC sections 1-103 and 1-101(1). However, if punitive damages for the conduct constituting wrongful dishonor are available under other law, they are available here. It is noted that third parties of authority do recognize the nature of the bank/customer relationship creates a debtor-creditor relationship governing the agreement of the parties to the instrument. No liability to, and to reject abational cases to the contrary absent truly egregious circumstances.241

Dishonor of a "stale" check is not wrongful dishonor even if it is otherwise properly payable.242

VIII. Notice of Dishonor and the Midnight Deadline

A. Notice of Dishonor and Recourse on the Instrument--banks, customers, and third parties

As a prelude to discussing the responsibilities of banks with regard to the dishonor and return of uncoupled items under Article 4, it may be helpful to review the general rules governing the return of uncoupled items, discussed supra at Part VI. In Article 3, notice of dishonor is primarily relevant to retaining the liability of indorsers on the instrument. Under Revised section 3-303 notice of dishonor must be given to prior indorsers by persons other than a bank within 30 days after that party properly pays the instrument. Notice of the dishonor.243 Failure to do so will discharge the liability of the indorser.244 This rule is sometimes excused.245

As a corollary, if the owner of a deposited item (i.e., the depositor's bank's customer) receives notice from the depositor's bank that a deposited item has been dishonored by the drawer/payee bank, that customer must in turn give notice to any prior indorsers within 30 days or the liability of the depositor's bank will be discharged.246 It may be expected that, in the case of multiple, consecutive indorsements, each indorser will then give the required notice of dishonor to that indorser's prior indorser, thus preserving a chain of liability between indorsers leading ultimately to the payee and then the drawer. Collecting banks and others may give notice by any reasonable means, including oral, written or electronic communication. However, the immediately preceding indorser is insolvent or cannot be found, the holder of the instrument may give notice of
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A "depository bank" is the first bank to take the item, even if it is also the payor bank, unless the item is presented for immediate payment over the counter. The depository bank is a collecting bank unless it is the payor bank, and the liability is limited to actual damages up to the amount of the item. If the depository bank is also the payor bank, it is subject to the rules governing payor banks, discussed infra at Part VIII D. In addition, the depository bank is also subject to restrictions arising from its relationship with the depositor. The depository bank is an agent of its depositor (the owner of the item). When the depository bank discharges its obligations as an agent of the payor bank, it has no obligation to the depositor; however, failure to give notice will not preclude recovery of any overdraft from the depositor under Article 4 or any deposit contract, although the bank will be liable for any actual damages caused by its delay in giving notice.

D. The Middleton Deadline -- Payor Bank

When an item is presented to the payor bank for payment, the payor bank must either dishonor or make some form of settlement. If the bank elects to settle for the item, it may do so by paying in cash or by allowing final or provisional credit for the item. If the payor bank fails to either dishonor or settle for the item within its proper deadline, it becomes "accountable" for the amount of the item. If the payor bank makes a provisional settlement, that settlement may be revoked if the bank properly dishonors the item within its deadline. Alternatively, the payor bank may make payment under Revised Section 4-215(a). As noted above, the bank has a duty to properly dishonor the item within the Middleton deadline, it becomes "accountable" for the amount of the item unless revised

Settlement will constitute final payment, and hence will not be subject to revocation, if the payor bank does any of these things:
1. pays the item in cash;
2. makes irrevocable settlement for the item under a standing, clearinghouse, rule, or agreement; or

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1. pays the item in cash;
2. makes irrevocable settlement for the item under a standing, clearinghouse, rule, or agreement; or
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3. fails to revoke the provisional settlement in the time and manner provided by statute, clearing house rules or by agreement.295

Once final payment has been made by a payor bank under Revised section 4-215 it cannot be revoked, but the bank may be able to recover the payment by asserting breach of warranty or on estoppel grounds.296

Revised Article 4 thus recognizes a distinction between final payment under section 4-215(a) and accountability under section 4-302(a). For example, if the payor bank makes provisional settlement and that settlement becomes final under Revised section 4-215(a), it is a matter of final payment and not a matter of accountability under Revised section 4-302(a) because Revised section 4-302(a) makes payor bank accountable only if the bank does not pay or disclaims the item within the midnight deadline; hence the bank does not become accountable under section 4-302 if it makes final payment under section 4-215.

The Official Comment to Revised section 4-301 illustrates this distinction by using an example.297 If a depository bank presents an item to the payor bank with instructions to return the payment in the form of a check, and the payor bank does so on the day of presentation, the payor bank has made provisional settlement, and that settlement may be revoked if the payor bank dishonors the presented item by returning it within the midnight deadline.298 If it fails to do so the check will be treated as if finally paid under Revised section 4-215 if there is no dishonored check that was given in payment. However, to the extent that it is honored by its drawee,299 and if the teller's check is dishonored, there has been no final payment, and since the provisional settlement was not revoked it is the payor bank's responsibility to account for the item.300

Revised section 4-215 Comment 7 provides a similar example where provisional settlement is made pursuant to a closing house agreement, and failure to revoke the settlement is treated as final payment under Revised section 4-215(x)(3).

A cashier's check or a teller's check may be used as a means of settlement with the agreement of the parties, and such settlement occurs when the instrument is sent.301 However, such settlement becomes final only when the instrument is paid for at the recipient's check for collection within its midnight deadline.302 If the cashier's check or teller's check is not paid, there is no final payment under Revised section 4-215(a), and failure to honor within the midnight deadline will make the payor bank accountable under Revised section 4-302(a). However, if an item is presented for payment over the counter, and is settled for by cashier's check or teller's check this constitutes final settlement under Revised section 4-215(x)(a). Since this payment was never provisional, Revised section 4-215(b) does not apply. Hence there is no final payment under Revised section 4-215(a) but rather accountability under section 4-215(b).

IX. The Bank — Customer Relation and Revised Section 4-406

A. Introduction

The legal relationship between the payor bank and its customer (the drawer of checks drawn on an account at the payor bank)303 is derived from several sources, primarily the Uniform Commercial Code (UCC) Article 4, Part 4, and the deposit contract.304 This discussion will focus on the impact of Revised section 4-406 on a payor bank's relationship with its customer (under Revised section 4-301(a)), and as a form of final payment where an item is presented for payment over the counter (also under section 4-301(a)).

As a general proposition, final payment occurs under Revised sections 4-213 and 4-215(a) when the payor bank provides a settlement to the party making payment305 and that settlement is or becomes final (e.g., by payment or by failing to revoke that settlement before the midnight deadline).306 In contrast, if the payor bank makes only provisional settlement and that settlement never becomes final, the payor bank may be accountable for the amount of the item under section 4-302(a).307 The distinction between payment (section 4-213(a)), disbursement (section 4-214(a)), and accountability (section 4-301(a)) is important, because in the former case parties on the instrument are discharged and payment has been completed and generally cannot be retrieved by the payor.308 In the latter case parties on the instrument may not be discharged and in some cases may still be able to reclaim the payment (under Revised section 4-302) if the payor may be enquired by the claimant, although Revised section 4-302(b) provides a set of exceptions to the bank's accountability.309

There is no requirement that a bank make periodic statements (showing account activity) available to its customers, and many accounts (e.g., passbook savings and certificate of deposit accounts) do not feature such statements. One result is that section 4-406 does not apply to such accounts, and the customer therefore has no specific duty to discover or report unauthorized signatures and alterations.310 If, on the other hand, a bank makes periodic statements available to its customers, the bank (under Revised section 4-301(a)) is required to include a description sufficient to allow the customer "reasonably to identify the items paid".311 This permits the bank to either return cancelled checks with the account statement or to provide a description of the items paid in lieu of physical return of the item.312 In the latter event, Revised Article 4 provides a basic guideline by indicating that it is sufficient to trigger the customer's duties to describe the items paid by number, amount, and date of payment.313 If the bank does not return paid items to the customer, it must either retain the items (or if the items are destroyed) maintain the capacity to furnish legible copies for a period of seven years.314 Upon a request by the customer, the bank must provide within a "reasonable time" either the paid item (if it has been destroyed or is not available) or a "legible copy" of the item.315

C. Obligation of the Customer to Report Improper Items

If the bank makes available a statement of account as described above, "the customer must reasonably cooperate in examining the statement or the items to determine whether any payment was not authorized"316 because of an alteration or improper imposter's signature.317 If the customer "should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts."318 It should be noted that the customer's duty is to give "prompt" notice to the bank. This obligation is not created by the subsequent 30 day notice provision at Revised section 4-406(d)(2); if the customer fails to give prompt notice and has no good reason for delay, the customer is not relieved of this duty even if notice was given within 30 days.319

D. Customer Preclusion Under Revised Section 4-406(d)

Revised section 4-406(d) is one of the few provisions in the UDAP that addresses the bank-customer relationship. It recognizes a preclusion that may prevent the bank's customer from asserting that an item was not properly payable, thereby prohibiting the bank to charge the bank's customer even
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if the item has been altered or the drawer's signature is improper. The customer may be precluded from asserting such assertions in two circumstances. First, as described at Revised section 4-406(d)(1) and (2). 

Section 4-406(d)(2) is the more important of the two. It provides that if the bank paid as an accommodation or as a bailee an unauthorized drawer's signature that was included or described in a periodic statement of account, and the customer should have but did not discover and report the improper item within "a reasonable period of time, not exceeding 30 days," then the customer is precluded from asserting an improperity by the same wrongdoer as to any other item paid by the bank after the end of that "reasonable period of time, not exceeding 30 days." In effect, the recognizes the customer's obligation to discover and report improper items, and provides that if the customer fails to do so and that failure results in the payment of additional forged or altered items, the fault lies with the customer and the customer should bear the loss. 

The 30 day period (up from 15 days in Old section 4-406(b)(2)) offers a closer limit to what constitutes a "reasonable time" to examine the statement and report any improper items. Obviously 30 days likely will be deemed a "reasonable time" for certain types of accounts (e.g., a corporation account with hundreds of month-end transactions); in other cases (e.g., a small consumer account with only a few dozen entries, or an account overdrawn when it clearly should not be a reasonable time, in which to act may well be less than 30 days. 

Whatever that "reasonable time" may turn out to be section 4-406(d)(2) provides a preclusion only as to items paid after the end of it and before any notice from the customer to the bank, unless the customer has any need for the bank to make any showing of loss. In contrast, section 4-406(d)(1) provides a preclusion as to items included or described as the account statement and paid before the customer has had a reasonable time to notify the bank, "if the bank also proves that it suffered a loss by reason of the customer's failure to notify the bank, and if the bank also proves that it suffered a loss by reason of the customer's failure to notify the bank." Thus, this section 4-406(d)(1) may preclude the customer from asserting a "reasonable time, not exceeding 30 days," the bank can prove, that it suffered a loss by reason of the customer's failure to exercise reasonable promptness in examining the statement or to notify the bank of any forgery or alteration of such account. 

The more difficult question may be how the bank can satisfy the requirement of establishing that "it suffered a loss by reason of the customer's failure to notify the bank." To meet obligations imposed under section 4-406(e). 

Traditional has been taken as a reference to instances where the forger or another wrongdoer was able to escape apprehension because of the customer's unexcused delay in discovering or reporting the improperity. In such cases, to comply, for an unexcused delay that contributed to the loss (and as a means to encourage statements).

E. Comparative Negligence Revised Articles 3 and 4 introduce the concept of comparative negligence in the context of four possible "preclusion rules." Section 3-404(d), (e)(1), and (d)(2)(ii), there, are then two specific time periods during which forged or altered items may potentially be paid and charged to the customer's account by reason of the preclusion rules. The first such period is that covered by the first statement or to notify the bank of any forgery or alteration. The second specific period is that covered by the first statement or to notify the bank of any forgery or alteration. The second specific period is that covered by the first statement or to notify the bank of any forgery or alteration.

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of an abbreviation.306 The Article 4 comparative negligence standard at Revised Section 4-406(e) clearly rejects the all-or- nothing standard used by the ‘Sun ’n Sand and Corcoran’ cases. In effect, the court is to ignore the negligence of the defendant and place the entire loss (plus, in Commercial Cotton, punitive damages) on the bank. Under the revised, the defendant is subject to strict liability for loss occasioned by his own negligence, as was the case under Revised Section 4-406(e), the most that can be done is to impose liability and not negligence on a comparative basis, under Revised Section 4-406(e).

This direct and exclusive allocation forms, based on comparative negligence, preclude any alternative test analysis under Section 1-103. This would cut-off a customer’s escape from the one-year statute of limitations at Revised Section 4-406(e) by means of Section 1-103, so as to preclude the kind of analysis used in ‘Sun ’n Sand and Commercial Cotton. Only if the bank failed to exercise good faith, as defined at Revised Section 3-103(a)(4), would the precision rule of Revised Section 4-406(e) be unavailable.307

X. Cashier’s and Teller’s Checks, Money Orders, Travelers’ Checks, Stop Payment Orders and Post-Dated Items

A. Cashier’s Checks, Money Orders, Travelers’ Checks, and Teller’s Checks — Introduction

For the first time, these specialized types of instruments are defined, as Revised Article 1:

1. “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.308

2. “Teller’s check” means a draft drawn on a bank (i) on another bank, or (ii) payable at or through a bank.309

3. “Check” is defined as a demand draft drawn on a bank, including checks denominated “money order.”310

4. “Travelers’ check” is also defined, essentially as an ordinary check, denominated a “traveler’s check” (or by a “substantially similar term”), requiring a counterattorney a prerequisite to payment.311

The obligation of the issuer of a cashier’s check is described at Revised Section 4-412(b) and is the same as the obligation of the maker of a note:

The issue of a note or cashier’s check or other draft drawn on the drawer is obliged to pay the instrument (as defined) according to its terms at the time it was issued . . . .312

This carries forward the effect of old Section 3-111(a) ("a draft drawn on the drawer is effective as a note", in the sense that both the drawer of a cashier’s check the maker of a note have "primary" liability on the instrument (they and not a third party are expected to pay and the obligation to pay is not subject to statutory conditions or prerequisites).313 But unlike old Section 3-111(a), Revised Article 3 otherwise treats a cashier’s check as a check rather than a note.314 A cashier’s check is treated as a check even though technically the drawer’s liability in equivalent to that of the maker of a note.

B. Consequences of a Bank’s Refusal to Honor

Along with clarifying that an ordinary money order (signed by the purchaser as a drawer) is like a personal check (and therefore a draft on a bank) (Ordinance 1970),9 probably the most important revisions in this area of law relate to discharge of cashier’s checks, traveler’s checks, and certified checks.315 Revised Section 4-311 specifies the circumstances when the bank will refuse to honor a cashier’s check, teller’s check, or certified check.316 Revised Section 3-312 provides a procedure whereby a person can recover from the issuing bank for wrongful refusal to honor a cashier’s check, teller’s check, or certified check.317 Revised Section 3-312 provides for a procedure whereby a person can recover from the issuing bank for wrongful refusal to honor a cashier’s check, teller’s check, or certified check.

The obligation of the issuer of a cashier’s check is described at Revised Section 4-412(b) and is the same as the obligation of the maker of a note:

The issue of a note or cashier’s check or other draft drawn on the drawer is obliged to pay the instrument (as defined) according to its terms at the time it was issued . . . .312

This carries forward the effect of old Section 3-111(a) ("a draft drawn on the drawer is effective as a note", in the sense that both the drawer of a cashier’s check the maker of a note have "primary" liability on the instrument (they and not a third party are expected to pay and the obligation to pay is not subject to statutory conditions or prerequisites).313 But unlike old Section 3-111(a), Revised Article 3 otherwise treats a cashier’s check as a check rather than a note.314 A cashier’s check is treated as a check even though technically the drawer’s liability in equivalent to that of the maker of a note.

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The obligation of the issuer of a cashier’s check is described at Revised Section 4-412(b) and is the same as the obligation of the maker of a note:
where the check has been lost, destroyed, or stolen. Even after receipt of such a declaration, the issuing bank may pay the check during the first 90 days after its issuance, but only if the following criteria are met:

- Clearly revised Section 3-122.5 provides that the payee or holder of a cashier's or teller's check (or the drawer of the check issued by the drawer bank) has a right to receive reimbursement and deposit payment on and after the 90th day in certain circumstances.

- It states that there are some new risks associated with this, both for the issuing and depositary banks. The risk for the issuing bank is small but includes the possibility that a claimant may fraudulently present a declaration of loss and obtain reimbursement, knowing that the check is not lost or destroyed due to the depositor's negligence.

- The risk for the depositary bank is to prevent payment of a stop payment order on a check that has been lost, destroyed, or stolen.

- One possibility for the depositary bank is to hand-deliver the check to the depositor, but this will be impractical in many instances. The most practical solution is to invoke the exception in Regulation CC section 229.15(e) concerning reasonable doubt as to the availability of funds, by using a blunder the fact that the depositor can read the check (2017 Ed. of F.R.C.C.) section 229.15(e).

- D. Stop Payment Orders by Depositary Banks

- The customer's unavailable right to stop payment of ordinary checks is contained in section 4-403. The provision provides that where more than one person is associated with the holder, the bank is authorized to draw on the account, any such person may stop payment on any item drawn on that account (even if the item was drawn by a different customer) or may close the account.

- Revised Article 4 changes this and permits payment of postdated items at any time, unless the customer provides the notice of dishonor.

- Revised Article 4 treats postdated checks much like a check subject to a possible stop payment order. The bank is entitled to pay a postdated check on presentation, regardless of the date of the check, unless the customer has given a notice to the bank similar to a stop payment order.

- Revised Article 4 has no effect on old Article 3, and a postdated check was sometimes held to be not properly payable, so that a bank paying such an item was unable to charge the customer's account.

- Revised Article 4 changes this and makes payment of postdated items at any time, unless the customer provides the notice of dishonor, the check being "not payable as drawn." Such an item can be resolved in the deposit contract or by giving notice to the customer in the manner of the notice on notice before the check is paid. If the bank pays despite timely receipt of a notice, it will be liable to the resulting damages including damages for wrongful dishonor.

- Revised Article 4 goes further and requires that all postdated checks must be properly payable at the time of the final payment of the check.

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