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Pennsylvania - 1959 Session - Amendments to Articles 3 and 4 of the Uniform Commercial Code

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LEGISLATION

PENNSYLVANIA—1959 SESSION—AMENDMENTS TO ARTICLES 3 AND 4 OF THE UNIFORM COMMERCIAL CODE

This comment has been prompted by the Pennsylvania Legislature's recent revision and re-enactment of the Uniform Commercial Code.¹ The code was originally enacted in Pennsylvania in 1953, and became effective on July 1, 1954. This original enactment was based on the 1952 Official Text of the Uniform Commercial Code, whereas the recent legislation is based on the 1958 official text, which includes most of the earlier text and several supplements thereto, as well as some entirely new material. It is the purpose of this comment to point out the differences between the 1952 and the 1958 official texts, and the interim supplements will be discussed only insofar as they are embodied in the 1958 official text. Where a section in the 1958 text is identical with the earlier text, it will not be discussed. Since this comment is intended to serve primarily as a reference work it is assumed that the reader will have both texts before him while he reads the comparison of a given section as formulated in the respective texts.

ARTICLE 3. COMMERCIAL PAPER.

PART 1. SHORT TITLE, FORM AND INTERPRETATION.

SECTION 3-102. DEFINITIONS AND INDEX OF DEFINITIONS.

The 1958 Code has eliminated the reference to the definition of "Documentary Draft" from subsection (2). This elimination corrects the error in the 1952 Code of referring to the definition in subsection (2) as well as in subsection (3). The revised Code has added two references to this section, both of which are also new to this Article. The first, "Restrictive Indorsement," is defined in section 3-205, while the second, "Intermediary Bank," is defined in section 4-105. "Intermediary Bank" was defined in the 1952 Code as well, but its use in that Code was restricted to Article 4.

SECTION 3-104. FORM OF NEGOTIABLE INSTRUMENTS; "DRAFT"; "CHECK"; "CERTIFICATE OF DEPOSIT"; "NOTE".

Subsection (3) of the 1958 Code is new. It has been added to make clear the policy of section 3-805, which section makes Article 3 applicable

1. PA. STAT. ANN. tit. 12a (1954), as amended, Pa. Laws 1959, act 426.

to instruments "not payable to order or to bearer," except that there can be no holder in due course of such an instrument. The reason for the inclusion of this subsection is illustrated in the changes in section 4-104 (1) (f).

SECTION 3-109. DEFINITE TIME.

The words "or acceptor" have been added in the 1958 Code after the word "maker." This is to make clear that the acceptor of an instrument is in much the same position as the maker of a note and in respect to the effect on negotiability of an optional extension of time provision, both should be treated in the same way.

SECTION 3-110. PAYABLE TO ORDER.

Subsection (1) (f) has been changed in the 1958 Code to attain verbal consistency with section 3-117 (a). This does not result in a change in the substantive law.

SECTION 3-112. ITEMS AND OMISSIONS NOT AFFECTING NEGOTIABILITY.

Subsection (1) (c) of the revised Code has added the words "or power to maintain or protect collateral." This addition merely eliminates the need to draft the instrument in such a skillful way as to bring out that the granting of a "power to maintain or protect collateral" is, in actuality, the granting of "additional collateral," which even under the 1952 Code was not fatal to negotiability.

Subsection (1) (g) has been added in the 1958 Code to make it clear that the instruments discussed in section 3-801 are negotiable. This is not a change in the law, but merely an express approval of what the law has been, since these drafts have long been treated as negotiable.²

SECTION 3-118. AMBIGUOUS TERMS AND RULES OF CONSTRUCTION.

Subsection (f) of the revised Code has been completely rewritten, in an attempt to avoid the possibility which existed under the 1952 Code of arguing that the rule of this subsection applied only in the case of notes. The 1952 Code spoke only of makers while the 1958 Code expressly extends itself to cover all other parties who can be affected.

The revised Code has dropped the requirement that the holder obtain the consent of the maker in order to extend an instrument which provided on its face for extension without such consent. The purpose of inserting in an instrument a clause allowing an extension of time at the option of the holder is to enable a holder to grant an extension without discharging secondary parties by operation of 3-606, and to avoid the running of the statute of limitations. The revised code has therefore removed the

2. See UNIFORM NEGOTIABLE INSTRUMENTS LAW §§ 178-83.

maker's power to frustrate the purposes of the clause by refusing to give his consent to the extension upon maturity.

The revised Code also resolves any doubt that may have existed as to the necessity of obtaining further consent on the part of secondary parties.

The 1958 Code reiterates the rule of section 3-604 concerning tender of payment, and points out its applicability to the type of situation covered by this subsection.

PART 2. TRANSFER AND NEGOTIATION.

SECTION 3-204. SPECIAL INDORSEMENT; BLANK INDORSEMENT.

Subsection (2) of the revised code has deleted "or indorsed for collection (section 3-206)." This will permit an indorsee to negotiate by delivery where an indorsement for collection is not a special indorsement and such negotiation by delivery will enable the transferee to become a holder in due course of the instrument if he otherwise complies with section 3-302.

Subsection (3) of the revised Code is new vis à vis the 1952 Code but actually merely restates section 35 of the Uniform Negotiable Instruments Law. Section 35 was excluded from the old Code to eliminate the possibilities of fraud³ which exist when a holder is permitted to write in such terms as "Payment Guaranteed" or "Protest Waived." The reinstating of the old phrase seems to be an attempt to expressly authorize a holder to negate the hazards of bearer paper by writing a special indorsement to either himself or another above a blank indorsement.

SECTION 3-205. RESTRICTIVE INDORSEMENT.

Conditional indorsements and those prohibiting transfer, covered by section 3-205 in the old Code, and the indorsements "for collection," "for deposit," and those to an agent or in trust, covered by section 3-206 of the old Code, were reclassified in this section under the term restrictive indorsements, which term was not used in the 1952 Code. These indorsements are listed and defined in the revised section 3-205, and the effects of the changes are discussed in section 3-206. The use of the term "restrictive indorsement" should not be confused with the concept of "restrictive indorsement" as used in the Uniform Negotiable Instruments Law,⁴ since it differs both in definition⁵ and in effect.⁶

3. UNIFORM COMMERCIAL CODE § 3-204 (1952), comment 1.

4. See UNIFORM NEGOTIABLE INSTRUMENTS LAW §§ 36, 37, 47.

5. Conditional indorsements were separately handled under the NIL in section 39. Their effect was different than that of a restrictive indorsement as can be seen by comparing NIL '39 with NIL 37 and 47.

6. The "restrictive indorsements" under the Code are not really very restrictive as can be seen in the revised section 3-206 (*but see* section 4-201), while sections 37 and 47 of the NIL drastically limited the rights and powers of subsequent holders, and thus were quite restrictive in effect.

SECTION 3-206. EFFECT OF RESTRICTIVE INDORSEMENT.

Subsection (1) of the revised Code applies to all four types of restrictive indorsements and provides that any indorsement which attempts to prevent further transfer or negotiation of the instrument will be ineffective for that purpose.

Subsection (2) of the 1958 Code also applies to all four types of restrictive indorsements. The 1952 Code contained an exception which stated that any collecting or payor bank would not be put on notice of any rights of the conditional indorser to the conditionally indorsed instrument or its proceeds and thus enabled all collecting and payor banks holding under a restrictive indorsement to become holders in due course if they otherwise complied with section 3-302. The revised Code, removes this exception as to a payor bank which is also a depository bank and places it in the same position as any other transferee treated in subsection 3.

Subsection (3) of the new Code applies to two types of restrictive indorsements, namely, conditional indorsements and those "for collection," "for deposit," and the like. The 1952 Code stated in section 3-205 that no subsequent holder other than a collecting or payor bank could be a holder in due course after a conditional indorsement. Under section 3-206 of the 1952 Code the first taker under an indorsement "for deposit" or "for collection" was limited in the amount to which he could become a holder for value to the extent to which he supplied "any value given by him for or on the security of the instrument in the manner . . . directed by the instrument." Subsequent holders for value were not affected by this indorsement.

Conditional indorsements and indorsements "for collection" or "for deposit" are treated alike in the revised Code. Under section 3-206 (3) of the revised Code any transferee under such an indorsement except an intermediary bank,⁷ becomes a holder for value to the extent that he acts consistently with the indorsement in paying or applying any value given by him for or on the security of the instrument. Thus, the revised Code

7. This subsection excepts only "intermediary banks" from compliance with its rules, but subsection (2), which applies in all cases of restrictive indorsements, states that payor banks which are not depository banks are not affected by these indorsements. This creates a problem of interpretation which must be resolved. Two resolutions present themselves. First, subsection (3) applies only to "transferees," and although the term is not defined in the Code, its use and context in other sections of the Code seem to imply that "payors" are not "transferees" (see § 3-417 where payors are treated in subsection (1) and transferees are treated in subsection (2), *but see* further section 4-205 where a payor bank's transferor is spoken of. This solution, however, raises another problem. If it is followed, a depository-payor bank will not be bound to apply any value given by it consistently with the restrictive indorsement. Section 3-419 (4), however, negatively implies that it might be liable for conversion of the instrument if it did not so pay or apply the value given by it.

The second resolution would be to hold subsection (3) subservient to subsection (2) and thereby excuse both intermediary and payor banks which are not also depository banks from the duties imposed by subsection (3). The easiest way out for the drafters would have been to either define the term "transferees" or to draft subsection (3) to read, "Except as provided in subsection (2)."

adopts the theory which was limited in application under section 3-206 of the 1952 Code to the first taker under a "for collection" or "for deposit" indorsement, and extends it to any transferee under an indorsement which is conditional or one "for collection," "for deposit," or the like, except an intermediary or payor bank.

Subsection (4) of the new Code applies to restrictive indorsements for the benefit or use of the indorser or another person. The only change in the treatment of these indorsements is that the revised Code clarifies the holder's rights thereunder by pointing out that "not affected" also means that no notice is given to the holder.

SECTION 3-207. NEGOTIATION EFFECTIVE ALTHOUGH IT MAY BE RESCINDED.

Subsection (2) of the new Code added the words "in an appropriate case," but this is merely a clarification of the law as it was under the 1952 Code. Its purpose is to make it clear that these remedies are not made generally available by this subsection, but are only permitted by it, in the cases where the law of the forum so provides.

PART 3. RIGHTS OF A HOLDER.

SECTION 3-302. HOLDER IN DUE COURSE.

Subsection (1) (b) of the revised Code has stricken the words "including observance of the reasonable commercial standards of any business in which the holder may be engaged," which followed the term "good faith" in the 1952 Code. This is a reversion to the law as it existed under the Negotiable Instruments Law,⁸ and the above-quoted clause has been omitted because it was claimed by many to incorporate an objective standard of good faith, as exemplified by *Gill v. Cubit*,⁹ along with a subjective standard.¹⁰ The objective test will most likely continue to exist, as a matter of fact, in the minds of the jury when they are evaluating the credibility of the holder's claim of good faith, however, it will not be as strong a test as it would be if the judge were required to include it in his charge to the jury.

SECTION 3-304. NOTICE TO PURCHASER.

Subsection (2) of the 1958 Code has replaced the phrase "reasonable grounds to believe" with the word "knowledge." This is another instance in which an objective, reasonable man sort of test is replaced by a subjective test.

The revised Code has eliminated subparagraph 2(a) completely since it really did nothing more than grant a possible boon to a prior party on the

8. UNIFORM NEGOTIABLE INSTRUMENTS LAW § 52(3).

9. 3 B.&C. 466 (1824).

10. See the definition of "good faith" in section 1-201 (19) of the 1952 Code.

instrument by taking the holder in due course shield away from a preferred creditor. The old section did not grant the bankrupt's creditors any rights they did not already have, under the Federal Bankruptcy Act or the insolvency law and these rights are still available to them regardless of the provision of the Uniform Commercial Code.

Subsection (3) has been completely deleted because the holders under the restrictive indorsements treated therein are now covered by the new treatment of restrictive indorsements in sections 3-205 and 3-206 of the revised Code.

Subsection (3) of the revised Code is merely subsection 4 of the 1952 Code renumbered, with one change, i.e., the revised code has replaced "reasonable grounds to believe" with "reason to know." This seems to have been done to maintain consistency with the phrase used in the definition of notice in section 1-201(25).

Revised subsections 4, 5, and 6 are merely subsections 5, 6 and 7 of the 1952 Code renumbered because of the deletion of subsection 3.

SECTION 3-306. RIGHTS OF ONE NOT HOLDER IN DUE COURSE.

Subsection (c) of the revised Code expressly makes reference to section 3-408.

In subsection (d) the clause concerning restrictive indorsements is new with the revised Code. The revised section 3-206 states the effect of a restrictive indorsement, but it is clear that this effect would be greatly dissipated if an obligor could pay the instrument inconsistently with the indorsement. Section 3-603(1)(b) solves this problem by stating that such payment would not amount to a satisfaction of the payor's liability on the instrument. Therefore, the payor can now set up the restrictive indorser's defense against the holder and is thus protected from double liability.

SECTION 3-307. BURDEN OF ESTABLISHING SIGNATURES, DEFENSES AND DUE COURSE.

Subsection (3) of the revised Code reverts to the language of the NIL when it calls for it to be *shown* that a defense exists. This is to avoid the possibility which may have arisen under the wording of the 1952 Code that the mere introduction of some evidence would be sufficient.

PART 4. LIABILITY OF PARTIES.

SECTION 3-403. SIGNATURE BY AUTHORIZED REPRESENTATIVE.

The revised Code divides subsection (2) of the 1952 Code into two subsections which restate the rule of the first sentence of the 1952 subsection, and add an exception in the case of an action between immediate

parties to the transaction where either the person represented is named, or it is shown that the representative signed in a representative capacity.

Subsection (3) of the revised Code is merely the last sentence of this section in the 1952 Code reworded with a reference to the aforementioned exception added.

SECTION 3-405. IMPOSTERS; SIGNATURE IN NAME OF PAYEE.

The revised Code adds the words "maker or" to subsections (b) and (c), which change expressly negatives any possibility of a distinction being raised between the handling of drafts and notes. However, it raises another problem in that by expressly extending the coverage to makers, the implication that remitters are covered as well becomes much weaker, and it seems that remitters should be covered.

SECTION 3-408. CONSIDERATION.

The last two sentences of the revised section are new. The first of these sentences states that a statute which provides that lack or failure of consideration is no defense is still effective.¹¹ It must be noted that the common law seal is not a statutory device so that, under section 3-113 a sealed instrument will be treated the same as an instrument not under seal. The second new sentence expressly adopts the rule of the last clause of NIL 28 which was only impliedly covered by this section of the 1952 Code.

SECTION 3-412. ACCEPTANCE VARYING DRAFT.

The revised subsections (2) and (3) have been rephrased but the meaning remains essentially the same, except that under the revised Code an acceptance which states that a draft is to be paid *only at* a particular bank or place in the continental United States will discharge each drawer and indorser who does not affirmatively assent to such variance. Under the 1952 Code such an acceptance would not have discharged those parties. However, discharge can still be avoided under the 1958 Code by not using the words "only at" in the acceptance, but letting the statute, section 3-504 (4), supply them.

SECTION 3-413. CONTRACT OF MAKER, DRAWER AND ACCEPTOR.

The revised Code adds "or as completed pursuant to section 3-115 on incomplete instruments" to subsection (1). This clause is removed from the comment to this section in the 1952 Code and placed in the text of the revised Code in order to supply greater emphasis.¹²

11. 1927, May 13, P. L. 985, No. 475, § 1; 33 P.S. § 6.

12. The official comments were recommended in section 1-102 (3)(f) of the 1952 Code as aids in interpreting the text and ascertaining the intent of the legislature. This entire section has been rewritten in the 1958 Code and subsection

SECTION 3-415. CONTRACT OF ACCOMMODATION PARTY.

Subsection (1) of the revised Code replaces the term "surety" with the words of NIL 29 for the purpose of clarification.

SECTION 3-417. WARRANTIES ON PRESENTMENT AND TRANSFER.

The words "Unless otherwise agreed" were dropped from subsections (1) and (2) in the revised Code, but this does not result a change in substantive law because the words merely expressed the availability of disclaimer of warranty, which existed prior to the 1952 Code without express statutory authorization.

The revised Code eliminates the (1)(b) warranty of the 1952 Code which gave a person who in good faith paid or accepted an instrument the benefit of a warranty running to him from the person who obtained the payment or acceptance "that he had no knowledge of any effective direction to stop payment." This warranty remedy replaced the restitutionary remedy given under the NIL in situations such as that in the *Foster* case.¹³ Since this warranty liability was an exception to the rule of section 3-418 on finality of payment, the person receiving payment could not escape the liability imposed by subparagraph (b). The elimination of this subparagraph thus removes stop payment cases from warranty treatment and also from the exception to the rule of section 3-418.

The revised subsection (1) (b) clarifies and extends the exception to the warranty of lack of "knowledge that the signature of the maker or drawer is unauthorized." The benefits of this warranty, however, are withheld from:

- (1) The maker of a note with respect to the maker's own signature. This was covered in the 1952 Code as well.
- (2) The drawer with respect to his own signature. This might have been covered by analogy to the maker situation under the 1952 Code, but it is now covered expressly. The reason for the exception as to maker is that he should know his own signature and if he pays an instrument on which his name is forged he should not be able to recover from the innocent holder whom he paid. This reasoning applies equally as well to a drawer.
- (3) To an acceptor of a draft:
 - (a) if the holder took the instrument after the acceptance, (this was also covered by the 1952 Code) or
 - (b) if the holder obtains the acceptance without the knowledge that the drawer's signature was unauthorized. This is new,

(3)(f) has been deleted. However, this deletion will seemingly not result in any change in the effect of the comments as can be seen in the Pennsylvania Bar Association's Annotations to the Uniform Commercial Code § 1-102.

13. *Foster v. Federal Reserve Bank of Philadelphia*, 113 F.2d 326 (1940).

but it is based on reasoning similar to that involved in subsections (1) and (2), namely, that a drawee should know the signature of its drawers and should not be protected by these statutory warranties if it pays on a forged drawer's signature. The law was the same under the NIL.¹⁴

The revised subsection (1) (c) clarifies and extends the exception to the warranty that "the instrument has not been materially altered." The benefits of this warranty are withheld, as against a holder in due course, from:

- (1) The maker of a note. This was also covered by the 1952 Code.
- (2) The drawer of a draft. This is new with the revised Code although it might have been covered by analogy under the 1952 Code. The reason for this exception is clear, namely, that the drawer should know the terms of a draft better than anyone else and should not be protected after he pays an altered draft.
- (3) The acceptor of a draft with respect to alterations made prior to acceptance, if the holder took the instrument after the acceptance. This rule was the same under the 1952 Code.
- (4) The acceptor of a draft with respect to alterations made after acceptance. This is new with the revised Code although it too might have been the law by analogy under the 1952 Code. It is based on the same reasoning as the other exceptions, namely, acceptors should know the terms of drafts accepted by them and should not need warranty protection. To help acceptors in a case such as this would be to invite laxity and give the person making the alteration a better opportunity to cover his tracks.

Subsection (2) has not been changed in substance under the revised Code. Subsection (2) (c) of the 1952 Code has been clarified and reiterated in subsection (2) (a) of the revised Code. The new subparagraph (a) joins the wording of NIL 65 (2) with the reason for the change in wording between NIL 65 (2) and the 1952 Code as stated in comment 8 to section 3-417.¹⁵ It then superfluously adds the words of the 1952 Code, which expressly covered both of the above. The rest of subsection (2) is unchanged except for the change in the order of the subparagraphs caused by transferring subparagraph (c) to subparagraph (a).

Subsection (3) and (4) are unchanged.

SECTION 3-418. FINALITY OF PAYMENT OR ACCEPTANCE.

The clause "or a person who has in good faith changed his position in reliance on the payment," has been added after "holder in due course."

14. This is the rule of *Price v. Neal*, 3 Burr. 1354 (1762).

15. To cover the case of an agent who transfers for another.

This is an express recognition of the general rule of the law of restitution, as expressed in the Restatement of Restitution, sections 69 and 142, (1937). The deletion of subsection (1) (b) from section 3-417 allows cases previously covered by that section to be covered by this section so that now a person who falls within one of the two groups protected by this section will also be protected when he has been paid over a stop order.

SECTION 3-419. CONVERSION OF INSTRUMENT; INNOCENT REPRESENTATIVE.

In subsection (3) of the revised Code the words "Subject to the provisions of the act concerning restrictive indorsements" have been added. These words do not limit the scope of the exception of the 1952 Code since their only purpose is to make it clear that liability under this section is not exclusive, and that satisfaction of this subsection alone will not release a representative from liability imposed by section 3-206.

Subsection (4) is new with the revised Code. Its purpose is to carry out the intent of revised section 3-206 which insulates intermediary or payor banks from liability under a restrictive indorsement by declaring that these banks are not liable for conversion solely because they have not complied with the terms of the restrictive indorsement.

PART 5. PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

SECTION 3-501. WHEN PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST NECESSARY OR PERMISSIBLE.

The words "or permissible" are added to "necessary" in the title to this section to illustrate that the section also covers optional choices and the word "made" is dropped from subsections 3-501 (1) (c) and 3-501 (2) (b) to resolve the ambiguity which existed under the 1952 Code as to whether acceptors of drafts which were not "payable at a bank" when made, but subsequently became "payable at a bank" were covered by these subsections. The phrase "and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security" has been added to subsection (3). This addition was made because the practice is common in certain foreign countries, and since the Code cannot change the practice in foreign countries it is better that the practice be expressly recognized rather than ignored.

SECTION 3-502. UNEXCUSED DELAY; DISCHARGE.

The word "made" was dropped from subsection 1 (b) for the same reasons as mentioned in the preceding section.

SECTION 3-503. TIME OF PRESENTMENT.

In subsection (1) (a) the words "the date it is payable" have been substituted for "that date." This is to avoid any possibility of erroneously interpreting "that date" as meaning a stated date rather than the date the instrument is payable. The latter interpretation presumably was intended under the 1952 Code.

The words "or accept" are added to subsection (3) to make it clear that this subsection applies whenever presentment is required, whether such presentment is for payment or for acceptance.

SECTION 3-504. HOW PRESENTMENT MADE.

In subsection (1) the phrase "or other payor" has been added to the revised code in order to make it clear that presentment is necessary to charge all payors and acceptors, not only the itemized list of payors and acceptors. This would make it clear that such a payor as the bank with an acceptance. "Payable at X Bank" is included within these rules.

In subsection (2) of the revised Code subparagraph (a) of the 1952 Code is divided into two subparagraphs. The first of these, pertaining to presentment by mail, presumably was the law of the 1952 Code by implication from comment 2 to this section. The second subparagraph of the revised Code pertains to clearing houses and subparagraph (c) thereto expressly includes acceptors, which were only impliedly included in the 1952 Code. The last clause of the 1952 Code stated that presentment at the place of business or residence of the party to pay was a valid presentment whether or not he was there; the revised Code states that such presentment would not be valid if the party to pay or his authorized agent were absent or inaccessible, but further declares that presentment would then be excused. This is a reversion to the rule of section 82 (1) of the Uniform Negotiable Instruments Law. The result will be the same either way, however.

The phrase "or other payors" has been added to subparagraph (a) of subsection 3 for the same reason that it was added in subsection (1).

SECTION 3-506. TIME ALLOWED FOR ACCEPTANCE OR PAYMENT.

The revised Code limits the time for which an acceptance may be deferred to two days. The 1952 Code permitted a holder to allow an acceptance to be deferred for an indefinite period, although the liability of secondary parties in the light of section 1-102 (3) (b) and section 4-108 (1) was thereby left in doubt. This change was made for the purpose of conformity with section 4-108 (1). The revised Code states that **this extension may be granted without either dishonor or discharge of secondary parties, while the 1952 Code referred only to dishonor.** This

additional language seems to be merely used for the purposes of clarification and to avoid any possible inference that there could be a discharge of secondary parties in these situations without dishonor.

SECTION 3-508. NOTICE OF DISHONOR.

Subsection (1). The phrase "to any person who may be liable on the instrument" has been added in the revised Code to make it clear that a holder or other proper party need not restrict the giving of notice to his immediate transferor. "In addition" is added to the second sentence to remove any implication that the words of the 1952 Code were meant to be exclusive, and that an agent could notify only its principal or immediate transferor.

The revised Code rephrases the old subsection (2) in order to clarify the intention of the legislature and also uses the words of subsection (4) and thereby makes clear the applicability of the rule laid down in that subsection, but there is no change in the substantive law.

SECTION 3-511. WAIVED OR EXCUSED PRESENTMENT, PROTEST OR NOTICE OF DISHONOR OR DELAY THEREIN.

In subsection (1) the word "protest" is transposed with the phrase "notice of dishonor" in order to make the first sentence read in the same order as the section heading. This does not change the substantive law. The word "notice" is used in the revised Code to replace the word "knowledge" which was used in the 1952 Code, in order to make it clear that reasonable care must be exercised by the holder to find out the due date, since "notice" as defined in section 1-201 (25) embodies an objective test. The word "otherwise" has been dropped from the revised Code because of the change from "knowledge" to "notice"; "otherwise" was put into the 1952 Code in order to show that the phrases "circumstances beyond his control" and "reasonable diligence" applied to the phrase "without knowledge." This made for difficulty in interpreting the old law since, without resort to the comments, it would be impossible to divine this intent.

Subsection 6 of the 1952 Code has been dropped entirely from the revised Code, but this results in no change in the law since the language of the section merely stated the logical effect of "excuse." Subsection (6) of the revised Code has expressly returned to the rule of section 110 of the Uniform Negotiable Instruments Law, which, although not expressly mentioned in the 1952 Code, remained the law thereunder.

PART 6. DISCHARGE.

SECTION 3-601. DISCHARGE OF PARTIES.

In subsections (1) (d) and (3) (b) the word "security" is changed to "collateral" in order to make these subparagraphs consistent with the title of section 3-606 to which these subparagraphs refer.

SECTION 3-603. PAYMENT OR SATISFACTION.

The last sentence of subsection (1) is new with the revised Code as are subparagraphs (a) and (b). Under the 1952 Code the question of whether the payor had to avail himself of the *jus tertii* defenses granted him in section 3-306 (d) arose. Subparagraphs (a) and (b) are expressly directed toward that question. Subparagraph (a) states that if the payor does not take advantage of this defense and pays a thief or holder under a thief in bad faith he will not be discharged. This, most probably, is not a change from the prior law, since a good faith requirement was imposed upon the payor under section 1-203. Subparagraph (b) is a change in the law only because of the changes in sections 3-205 and 3-206 concerning restrictive indorsements which are reflected in subparagraph 3-306 (d) as an additional *jus tertii* defense. Bad faith is not expressly required by this subparagraph since its requirements could not be breached in good faith.

SECTION 3-605. CANCELLATION AND RENUNCIATION.

Subsection (1) (a) of the revised Code has taken from comment 2 to this section in the 1952 Code the test for determining how cancellation is to be effected, namely, "in any manner [which makes it] apparent on the face of the instrument or the indorsement," and placed it in the text of the statute. It then drops as surplusage "or by writing cancelled or equivalent words across the instrument or against the signature," since the broad language used in the subparagraph includes these specific situations.

The 1952 Code enumerated certain methods of cancelling an instrument in subparagraph (1) (a), which methods were only applicable when they were made apparent on the face of the instrument and they were also exclusive. The 1958 Code includes only one method of cancelling an instrument. That method, also said to be exclusive, is "any manner apparent on the face of the instrument or indorsement." However, since the methods enumerated in the 1952 Code covered "any manner apparent on the face of the instrument" the change is not a substantive change, but only a clarification of what was the law.

The revised Code, in subsection (1) (b), expressly requires a *delivery* of a signed writing of renunciation. This conforms to the general rule of releases expressed in the Restatement of Contracts, section 402 (1932).

SECTION 3-606. IMPAIRMENT OF RECOURSE OR OF COLLATERAL.

The words "on the instrument" were dropped from subsection (1) (a) in the revised code in order to eliminate the possibility of a negative implication being drawn therefrom which would result in an interpreta-

tion affording a contrary result where there is a right of recourse, but not "on the instrument." This is not a change in substance since the majority of instances in which the negative inference could have been argued would have involved accommodation parties which were expressly covered by comment 5 to this section in the 1952 Code.

The phrase "or delay" has been added to the revised Code after "failure," but this is not a change in the substantive law since "delay" is included in "failure." It has probably been added in order to conform to the terminology of section 3-502.

The 1952 Code contained a rule which prevented a person who received an effective notice of dishonor from claiming discharge under section 3-606 (b) on the ground that a person against whom he had a right of recourse had been discharged by operation of section 3-502 (1) because such person had not received an effective notice of dishonor.¹⁶

The 1958 code has extended this rule to cover all discharges by operation of section 3-502, that is presentment and protest as well as the aforementioned notice of dishonor. This is especially hard on the unwary party who has waived notice because in many instances he will not find out about the dishonor until after the parties against whom he would have had recourse have been released by operation of section 3-502 (See section 3-511). The party who receives notice or protest can at least forward this to parties against whom he has recourse.

Subsection (3) was an innovation in the 1952 Code since there had been no prior uniform statutory provision on point. The revised Code has dropped it because the lack of notice of the reservation will not injure that person against whom the rights are reserved since his rights under part 5 of this article will not be affected.

PART 7. ADVICE OF INTERNATIONAL SIGHT DRAFT.

The entire Part 7 of Article 3 of the 1952 Code has been transferred to Article 4, Part 5, of the revised Code and will be discussed under that heading.

SECTION 3-701. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

The revised Code has taken section 3-806 verbatim and renumbered it 3-701 to avoid the necessity of renumbering the entire part 8 of the 1952 Code.

16. The basis for this rule seems to be that a person receiving such notice should in turn notify parties liable over to him, and he will not be allowed to capitalize on his failure to do so merely because someone else also failed to give notice.

PART 8. MISCELLANEOUS.

SECTION 3-801. DRAFTS IN A SET.

Subsection (3). The revised Code has added a cross reference to the end of this subsection for purposes of clarification. For another change relating to this section see revised subparagraph 3-112 (g).

SECTION 3-802. EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH IT IS GIVEN.

Subsection (2) has been rewritten to deal with all checks instead of uncertified checks only. This removes the possibility of arguing that the exception to the general rule of discharge of the surety where there is an extension of time granted to the principal debtor¹⁷ does not apply to instances where certified checks are given. The above argument would only have been significant in the situation where the certifying bank had failed, since otherwise the creditor would be paid by the certifying bank.

Subsection (3) of the 1952 Code has been completely dropped from the revised Code. This will result in a reversion to the law as it existed prior to the 1952 Code and the only change will be in the situation where there is no dispute as to the amount of, or liability for, the underlying obligation and it would not be unconscionable to discharge fully such underlying debt. In the light of the interpretation of "unconscionable" given in comment 5 to section 3-802 of the 1952 Code this would be a rare case.

SECTION 3-803. NOTICE TO THIRD PARTY.

The 1952 Code permitted a defendant to vouch in any third person who is or may be liable on the instrument. This section has been rewritten to permit a defendant to vouch in any person answerable over to him under the provisions of article 3; this broadens the rule to include such persons as those liable for conversion under 3-419. The 1952 Code also permitted a defendant to vouch in a third person who was liable to the plaintiff as well as one who was liable only to him. The 1958 Code eliminates the former provision and only permits vouching in situations where the third party is answerable over to the defendant giving the notice.

SECTION 3-806. LETTER OF ADVICE OF INTERNATIONAL SIGHT DRAFT.

See section 3-701 of the 1958 Code.

17. RESTATEMENT, SECURITY § 129 (1941).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

SECTION 4-102. APPLICABILITY.

In subsection (1) the 1952 Code stated that Article 3 would govern this article but in the event of conflict Article 4 would prevail.¹⁸ The revised Code provides for the same rule with respect to Article 3, but states in addition, that items within this article are also to be governed by Article 8 and that in the event of conflict between this article and Article 8, the latter will prevail.

Subsection (2) of the revised Code has dropped the express disclaimer of the applicability of the rules of section 1-105 to this section. This has been done because section 1-105 has been revised to expressly subordinate the rule of that section to this section. The revised Code also speaks of the liability of a bank for non-actions as well as its liability for actions and thereby avoids any implication that this section will not apply in instances such as the retention of an item beyond the midnight deadline of the bank.

SECTION 4-103. VARIATION BY AGREEMENT; MEASURE OF DAMAGES; CERTAIN ACTION CONSTITUTING ORDINARY CARE.

Subsection (1) has been changed grammatically in order to make it clear that the phrase "for its own lack of good faith or failure to exercise ordinary care" modified "bank's responsibility" as well as "measure of damages." The revised Code also makes it clear, by express provision, that an agreement between the parties as to what constitutes ordinary care will be valid as within section 1-102 (3) but this does not result in a change in the law.

SECTION 4-104. DEFINITIONS AND INDEX OF DEFINITIONS.

The terms "negotiable or non-negotiable" have been added to subsection (1) (f) before the word "draft" in order to make it clear that the definition of "draft" given in section 3-104 is only a definition of a negotiable draft and the term "draft" as used in this section of the 1958 Code refers to all drafts whether or not they are negotiable, despite the cross reference in subsection (3) to the definition of "draft" in section 3-104.

SECTION 4-106. SEPARATE OFFICE OF A BANK.

The 1952 Code as adopted in Pennsylvania in 1953 treated as separate banks only those branches or separate offices of banks which maintained their own deposit ledgers. This requirement of maintaining separate

18. Thus, an intermediary bank would be affected by the restrictive indorsement "pay any bank" due to the operation of 4-201, despite the general release in section 3-206(2). See text at § 4-201.

deposit ledgers is made optional in the Official Text of the 1958 Code and the Pennsylvania legislature in the 1959 Act¹⁹ has elected not to require it.

PART 2. COLLECTION OF ITEMS: DEPOSITORY
AND COLLECTING BANKS.

SECTION 4-201. WHEN ITEM TAKEN FOR COLLECTION.

This section has been extensively rewritten and expanded to apply not only to the depository bank but to all collecting banks. (See the definitions in section 4-105). This will not result in any change in liability, since under the 1952 Code the depository bank could have vouched in the intermediary banks under section 3-803.

The revised Code expressly speaks of an agency relationship while the 1952 Code spoke only of taking "for collection." This also does not change the law. The first sentence of this section of the revised Code is an awkward attempt to clarify what was the law under the 1952 Code. The joinder of two dissimilar things, the statement of the exception to the rule²⁰ and the statement of the duration of the rule,²¹ by the conjunction "and" leads to difficulty in reading, if not in interpretation. The placing of the clause "prior to the time that a settlement given by a collecting bank for an item is or becomes final" at the end of the sentence would more aptly express the intent of the legislature.

The revised Code expressly speaks of the subjection of the rights of the owner-principal to the rights of the collecting bank-agent as to the proceeds of an item. This also is not a change in the law, but only an express codification of the existing law.

The last sentence of this section of the revised Code applies the "relevant provisions of this Article" even in cases where a bank has clearly purchased the item. This seems to be surplusage since the other sections of this article which probably are relevant speak not of banks generally but specifically, as for example, "collecting banks" (see section 4-202), and section 4-105, which defines these specific terms, excludes banks which are owners of items from inclusion under these terms (see comment 1 to section 4-105).

Subsection (2) of the revised Code is completely new. It subjects intermediary and payor banks to duties similar to those of a transferee under a restrictive indorsement.²² See sections 3-205 and 3-206 of the revised Code. Section 3-206 will not invalidate this subsection since section

19. PA. STAT. ANN. tit. 12a (1954), as amended, Pa. Laws 1959, act 426.

20. "Unless a contrary intent clearly appears." This was the express rule of the 1952 Code as well.

21. "Until a settlement by a collecting bank is or becomes final." This was not the express rule of the 1952 Code but it was impliedly the rule since it is the very essence of the word final.

22. This makes the indorsement very restrictive in that the restrictions on negotiation are much more substantial than the "restrictions of section 3-206."

4-102 (1) states that Article 4 will prevail over Article 3 in cases of conflict. Subparagraph (a) is an express application of section 3-208 on reacquisition, and subparagraph (b) provides for the rare case in which a bank might desire to negotiate an instrument to someone outside the banking system. Without this safety valve an item so indorsed would be frozen in the banking system and could only escape if the check were bounced back to the depositor. The requirement that the item be specially indorsed is seemingly for the purpose of obtaining the indorsement on the first transferor after it leaves the banking system, possibly for evidentiary reasons.

SECTION 4-202. RESPONSIBILITY FOR COLLECTION; WHEN ACTION SEASONABLE.

Subparagraph (c) of subsection (1) of the revised Code replaces the word "payment," with the word "settlement." This change seems to have been made for purposes of conformity with the terms used throughout the article. See section 4-104 (1) (j) for the definition of "settlement."

In subsection (3) the revised Code expressly states that the rules of this subsection apply whether the subagent selected by the bank is another bank or a person while the 1952 Code expressly spoke only of non-liability for the wrongs of subagents which were banks. This express provision probably did not exclude the application of the rules of persons other than banks; however, and this change, therefore, is most likely not a change in the law.

The revised Code has expressly re-enacted the rule of section 8 of the Uniform Bank Collection Code. This rule must have been the law under the 1952 Code, since there would have been no grounds to hold banks liable if the banks had used ordinary care, and if they did not they would have been liable under subsection (1) of this section. See "Draftsman's Note" following section 8 of the Uniform Bank Collection Code.

SECTION 4-203. EFFECT OF INSTRUCTIONS.

The revised Code has clarified that which was intended to be the law under the 1952 Code. It has limited the application of this section to collecting banks, thereby eliminating the possibility of a drawee bank avoiding liability under section 3-419. The revised Code also expressly subjects this section to section 3-419 and to the provisions of both Articles 3 and 4 concerning restrictive indorsements, and the comment to this section contains a list of sections in both articles which concern restrictive indorsements, but evidently this is not exclusive because subsection 2 of section 4-201 is not in the list, and it is clearly a "provision of . . . this Article concerning restrictive indorsements," though it is not expressly so called, since it deals with the "Pay any bank" indorsement. See section 3-205 (c).

SECTION 4-204. METHODS OF SENDING AND PRESENTING; SENDING DIRECT TO PAYOR BANK.

Subsection (2) has been revised, for purposes of clarification, into three subparagraphs. Subparagraph (a) is almost a verbatim listing of the first clause of the old subsection with the only change being the change of the word "an" to "any" but this results in no change in the law.

Subparagraph (b) is merely the restatement of the latter part of the subsection in the 1952 Code in a positive rather than negative form.

Subparagraph (c) is new on its face. It seemingly states an exception to the rules of section 4-203, but not if viewed, as it must be, as merely an adjunct of subparagraph (b) in that a transferor authorizes what is "authorized by Federal Reserve regulation or operating letter, clearing house or the like" when he transfers any item other than a documentary draft by operation of section 4-103 (2). The reasoning is not carried over to documentary drafts because of the possibility that if it were applied thereto it might destroy one of the major reasons for using a documentary draft.²³ This exception for documentary drafts is seemingly inconsistent with section 4-103 (2), but is merely an instance in which this article disapproves of Federal Reserve regulations and 4-103 (3) applies.

SECTION 4-205. SUPPLYING MISSING INDORSEMENT; NO NOTICE FROM PRIOR INDORSEMENT.

In subsection (2) the 1958 Code has changed "collecting" to "intermediary" bank in order to permit section 3-206 to operate, as can be readily seen by the change in terminology from "by any condition in a trust imposed or agency declared by prior indorsement" to "by a restrictive indorsement."²⁴ The subsection as amended is an almost verbatim reproduction of section 3-206 (2) of the revised Code, the only change being the deletion of the last phrase "or the person presenting for payment." The only reason found for the deletion of this phrase is that it is not appropriate in the light of the title to this article, "Bank Deposits and Collections." Its deletion has little overall effect, since a mere deletion in this article is not a "conflict" with the provisions of Article 3 as meant in section 4-102.

SECTION 4-207. WARRANTIES OF CUSTOMER AND COLLECTING BANK ON TRANSFER OF PRESENTMENT OF ITEMS; TIME FOR CLAIMS.

This section has been completely rewritten to conform with section 3-417.

23. Namely that of keeping the documents away from the buyer until after the draft has been accepted or paid, whichever is called for.

24. The use of "collecting bank" here would enable a depository bank to defeat the effect of a restrictive indorsement since the term "collecting bank" includes all depository banks by definition in section 4-105(a) and Article 4 prevails over Article 3 whenever they conflict.

Under the 1952 Code the warranties of subsection (1) ran first to the depositary bank and then to "all subsequent intermediary banks and to the payor." The 1958 Code changes this so that, now, the warranties in this subsection only run to the payor and the warranties on transfer are covered in subsection (2). This does not mean that a collecting bank may not charge back an item to its transferor, however, since collecting banks are agents by operation of section 4-201 and an agent may transfer an item back to its principal without the need of any warranties. Good faith has been made an express requirement in all of the subparagraphs of this subsection but this is no change in substance since it was an implied requirement under the 1952 Code by operation of section 1-203.

Subparagraph (1) (d) of the 1952 Code has been completely eliminated in the 1958 Code. See the treatment of section 3-417 *supra* for the effect of this deletion.

In subparagraph (1) (a) the words "transferred or presented" have been dropped in the revised Code since subsection (1) now only deals with warranties on presentment and the warranties on transfer are treated in subsection (2).

Subparagraph (1) (b) of the 1958 Code covers the warranty of "lack of knowledge that the signature of the maker or drawer is unauthorized," which warranty was covered by subparagraph (1) (c) of the 1952 Code. The revised subparagraph clarifies and extends the exception to this warranty which was embodied in the last clause of subsection (1) of this section in the 1952 Code. The benefits of this warranty are now withheld, as against a holder in due course, from:

- (i) "The maker with respect to the maker's own signature."
- (ii) "A drawer with respect to the drawer's own signature."
- (iii) "The acceptor of an item if the holder in due course took after the acceptance."
- (iv) The acceptor of an item if the holder in due course obtained the acceptance without the knowledge that the drawer's signature was unauthorized.

The exception in the 1952 Code only applied to number (iii) above and was allowed because of the rule of *Price v. Neal*,²⁵ that is, the acceptor should know the signature of the drawer and should be bound by his acceptance. This reason applies equally as well in the other three cases to which the exception has been extended.

Subparagraph (1) (c) of the 1958 Code covers the warranty that "the item has not been materially altered" which warranty was covered by subparagraph (1) (b) of the 1952 Code. This subparagraph has been revised in the same manner and for the same purpose as subparagraph (1) (b) of the revised Code, the only difference being:

25. 3 Burr. 1354 (1762).

- (1) The overall tenor of the subparagraph naturally speaks of alterations rather than signatures.
- (2) Subsection (c) (iv) covers the situation where an item has been altered after acceptance. The drawer's signature cannot become unauthorized after the acceptance.
- (3) The clarifying phrase "even though a draft has been accepted payable as originally drawn or in equivalent terms," has been more clearly stated and transferred to subsection (1) (c) (iii).

Both subparagraphs (b) and (c) state that the warranties are "not given by any customer or collecting bank that is a holder in due course and acts in good faith." A bank will also acquire this benefit if it becomes a holder in due course by operation of sections 4-208 and 4-209. Where, however, the collecting bank acts only as an agent, as it does in many cases (see section 4-201), it could not be a holder in due course and therefore the exception would not apply to it. However, the shelter provisions in section 3-201 state that the transferee of an instrument has the rights of its transferor. Therefore, the collecting bank would in many cases be able to obtain the benefit of this exception through the shelter principle, but its rights will depend in these situations upon the status, good faith, and in some cases, knowledge of its customer.

Subsection (2) has been revised to clarify the rules dealing with warranties made by a transferor receiving a settlement or consideration for the transfer, which warranties run to all subsequent collecting banks (see the definition of collecting bank in 4-105 (d)), and to treat all the warranties made on transfer in one subsection rather than two. There is no substantive change in the law, though the 1958 Code lists the warranties in a different order and includes in the list the warranty that "the item has not been materially altered," which was a part of the text of the paragraph in the 1952 Code. The revised subparagraph (a) which formerly was subparagraph (b) in the 1952 Code has had surplusage added to it in the same manner as section 3-417 (2) (a). The last sentence of subsection (2) has been rephrased in the negative form and transferred to subsection (3) to make it clear that the provisions of this sentence are meant to apply to damages under subsection (1) as well as under subsection (2).

The first sentence of subsection (3) of the 1958 Code is almost a verbatim reproduction of the 1952 subsection except for the addition of the words "indorsement or" before "words of guaranty or warranty. . . ." These words have been added because of the decreasing importance of indorsements within the collecting system. See sections 4-205 (1) and 4-206. The last sentence of this subsection has been transferred from subsection (2). See the comment to subsection (2).

Compare the comments to 3-417.

SECTION 4-208. WHEN BANK EXTENDING CREDIT FOR ITEM OR PURCHASING DRAFT OR TIME INSTRUMENT HAS SECURITY INTEREST.

The title to this section has been changed to reflect the full tenor of the revised section which now covers not only the time when the security interest arose but also other facts about the security interest.

Subsection 1 (b) of the 1958 Code has replaced the words "all other cases" with the words "case of an item." This change removes any possible doubt as to whether this section would apply in situations in which credit has been made available as of right, but not for the item in question.

Subsection (1) (c) of the 1958 Code is intended to bring within the scope of this section those leading transactions not involved in the routine incident of collections or in credit for drawing, such as discounted notes.

The first sentence of subsection (2) of the 1958 Code is a duplication of subsection (2) of the 1952 Code except that the last clause of subsection (2) of the 1952 Code has been dropped therefrom, seemingly because of its innate conflict with the rest of the subsection as well as with subsection (3), and because the difficulty of applying it far outweighed its benefits. The second and final sentence of subsection (2) of the 1958 Code is a verbatim re-enactment of the "first in, first out" rule of subsection (3) of the 1952 Code. This rule should be limited in application to cases in which the bank cannot charge back the item against an absolute credit composed of cash or finally paid items in the depositor's account. The bank should not be left to choose, at its whim, the party from whom it will exact payment as between the depositor and the drawer.

Subsection (3) of the 1958 Code is new. It logically divides itself into two topics, the first of which, embodied in the first sentence, is only an express statement of what apparently was the law under the 1952 Code. The second topic expressly subjects the security interest of a collecting bank in any item to the rules of Article 9 of the Code and also gives the bank the benefit of the three enumerated exceptions.

SECTION 4-211. MEDIA OF REMITTANCE; PROVISIONAL AND FINAL SETTLEMENT IN REMITTANCE CASES.

The word "certain" in the 1952 title to this section has been deleted and the word "remittance" inserted in its place to clarify the meaning of "certain" in the 1952 Code.

Subsection (2) of the 1958 Code is in substance a postscript to subsection (1) of the 1952 Code. The only change other than in the sentence structure is the extension of the rule which absolves collecting banks from liability to prior parties to cases where settlement has been proffered in an unauthorized manner.

Subsection (3) of the 1958 Code is a complete revision, clarification and extension of the subject matter of subsection (2) of the 1952 Code. Instead of speaking directly of liability, the revised subsection speaks of final settlement, and the three subparagraphs to this revised subsection set up the times at which settlement becomes final. This is no change, however, since once settlement becomes final, liability follows.

Subparagraph (a) states that when subsections (1) and (2) have been complied with, either by taking a remittance authorized by section (1) or by taking proper action before the midnight deadline, settlement will not be final until there is final payment of the remittance in accordance with section 4-213.

Subparagraph (b) states that in situations in which the collecting bank has authorized settlement by means of an instrument not approved by subsection (1), settlement will become final when such check or obligation is received by the collecting bank.

Subparagraph (c) states, in many words, that in all cases settlement will become final at least by the collecting bank's midnight deadline.

SECTION 4-212. RIGHT OF CHARGE-BACK OR REFUND.

The first sentence of subsection (1) is merely a rephrased statement of the rule of the 1952 Code, with the controversial phrase "learns that it will not receive" more succinctly stated. The definition of "learn" as given in section 1-201 (25) of the revised Code seems to make this change unnecessary, in that it is only possible to "learn" of a fact after it has occurred, and thus, in view of this definition, a bank could not exercise its rights under this subsection until final settlement had in fact failed.

Subsection (6) has been changed in two ways; first, it has been extended in its application to all cases in which credit is given for items payable in foreign currency, whereas the 1952 Code applied only to cases involving provisional credits, secondly, the "rate of exchange" which was spoken of in the 1952 Code has been clarified to read "buying sight rate," in order to conform to the language of section 3-107 (2).

SECTION 4-213. FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL.

The last clause in the title is new to the 1958 Code. The addition is appropriate, in that, in general, items become available for withdrawal as of right when payment on them is or becomes final. The addition also conforms to the revised language of subsection (4).

The revised Code has drastically changed the format of subsection (1) but its changes are not changes in the law. The revised subsection

continues in the revised subparagraphs (a) and (c) the two tests expressly set out in the 1952 subsection.

Subparagraph (b) does not contain a new rule, but merely embodies an express statement of what apparently was the law under the 1952 Code. Section 4-104 (j) states that settlement must be either provisional or final and subparagraph (b) merely restates the same idea, namely, when a settlement is not provisional it is final. It covers such cases as certification and separate remittance by cashier's check.

Subparagraph (d) also does not change the law but is merely the rule of the last sentence of subsection (2) of the 1952 Code rephrased.

The last sentence of subsection (1) of the 1958 Code is merely an express statement of the logical result of final payment by some means other than payment of legal tender.

The only change in subsection (2) is the deletion of the last sentence, which is now more appropriately covered in subsection (1).

Subsection (3) is merely the rule of subparagraph 3 (d) of the 1952 Code rephrased and extended to cover collecting banks, and not only depository banks. The overall tenor of this section seems to imply that the limiting of the rule so as to cover only depository banks was an oversight in the 1952 Code.

Subsection (4) is, in general, the restatement of the rules of subsection (3) of the 1952 Code. The words "or to any right of charge-back or recourse" have been eliminated from the opening paragraph of the subsection. These words had no meaning under the 1952 Code since the rights were available only until payment became final, and thus the rule was subjected to rights which could never exist. The rules of this subsection now apply to all banks while under the 1952 Code their application was limited to depository banks; this change seems to carry out properly the intention of the section. The last word of the preamble, "final," has been dropped in the revised Code and the words "available for withdrawal as of right" have been added in its place. This is only a change in phraseology which was made in order to clarify the ultimate effect of final payment in these situations.

Subparagraph (a) and (b) of the revised Code are merely the rules of subparagraphs (c) and (a) of the 1952 Code rephrased.

Subsection 5 of the 1958 Code is the rule of subparagraph 3 (b) of the 1952 Code rephrased and clarified. It is removed to a separate subsection because it deals with the effect of a deposit which is final when made, while subsection (4) deals with the effect of credits which become final.

SECTION 4-214. INSOLVENCY AND PREFERENCE.

This section has been amended to cover expressly the situation which arises when settlements which are provisional at the time a bank suspends payment subsequently automatically become final due to the operation

of other sections of the Code. This amendment, for the most part, appears in subsection (3) of the 1958 Code, however, subsections (2) and (4) also reflect this change in that in these subsections the word "final" has been replaced by the phrase "which is or becomes final." The rule of the 1952 Code was probably the same since subsection (3) of that code also referred to settlement which "becomes final."

PART 3. COLLECTION OF ITEMS; PAYOR BANKS.

SECTION 4-301. DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF DISHONOR.

The revised Code has expressly limited the application of subsection (2) to cases involving demand items. This was of necessity also the law under the 1952 Code, since the section could have had no application in the case of time items, because dishonor would not occur after the item became due.

SECTION 4-302. PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM.

The word "responsibility" has replaced the word "liability" in the title to this section, seemingly because the revised Code speaks of "accounting for the amount of the item" rather than "recovery for the item."

The revised Code also expressly alludes to the availability of defenses other than the "breach of presentment warranty" of the 1952 Code. This does not result in a change in the law, but only in the expression of it.

SECTION 4-303. WHEN ITEMS SUBJECT TO NOTICE, STOP ORDER, LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.

The opening paragraph of subsection (1) has been rewritten for purposes of clarification. The revised preamble is stated in negative terms of "coming too late" while the 1952 Code was phrased in the affirmative manner of "priority." The only substantive change is in the express granting of a reasonable time to the bank in which it can act upon the notice, stop order, legal process or setoff which has been added in order to protect the rule of section 4-403 (1).

Subparagraph (c) has been extended to cover all items finally paid under section 4-213 (1) (b). The 1952 Code only spoke of settlement by separate remittance, which is merely one of the types of settlement covered by section 4-213 (1) (b).

Subparagraph (e) has been changed to conform to the terminology of the revised section 4-302, and to point out the fact that this is also final payment in the revised Code under section 4-213 (1) (d).

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

SECTION 4-401. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

The revised Code has changed subsection (2) (b) in order to comply expressly with the rules of Article 3 as to the effect of an improper completion of an incomplete instrument (see section 3-407 (2) (b)). It is very likely that this does not change the law since this rule was probably implied in the 1952 Code from the use of the term "good faith."

SECTION 4-402. BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR.

The word "wrongful" has been added to the title to this section to more properly label it, and the section has been completely redrafted for purposes of clarity; also an express requirement that the "damages proved," to use the terminology of the 1952 Code, be "proximately caused," has been added.

SECTION 4-403. CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS.

In subsection (2) the test of "reasonable opportunity" to send the bank written confirmation of an oral stop order has been changed in the 1958 Code to an absolute test of "fourteen calendar days" in which to do so. This has evidently been done merely for the sake of simplicity and uniformity and to avoid the question of fact raised by the 1952 Code. The revised Code has also extended the requirement of a subsequent written confirmation to cover all stop orders, whether or not the bank requests this confirmation.

SECTION 4-405. DEATH OR INCOMPETENCE OF CUSTOMER.

Subsection (1) of the revised Code has superfluously expounded the same rule as the 1952 Code, seemingly to meet the finically scrupulous criticisms of the New York State Law Revision Commission.²⁶

The revised Code also eliminates the possibility of interpreting the phrase "his items" to exclude either items owned as a holder but not issued or items which are issued but not owned as a holder.

SECTION 4-406. CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION.

Subsection (1) of the revised Code restates the rule of subsection (1) (a) of the 1952 Code with two changes of substance. The 1952 Code

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stated three specific situations in which this rule applied but the 1958 Code drops the statement of the third specific situation and replaces it with a general rule in order to cover any unusual fact situation which may reasonably arise. The second change is the deletion of the last clause of subsection (1) (a). The rule of "liability" has also been changed to one of "preclusion to assert a defense" and as changed is transferred to the revised subsection 2 (a).

Subsection (2) is, in general, the counterpart of subsection (1) (b) of the 1952 Code, but it has, however, had several substantial changes. Subsection (1) (b) of the 1952 Code was subordinated to subsection (2) in that Code, the "good cause delay" subsection. The revised Code, however, has dropped the rule of subsection (2) of the 1952 Code and therefore this subsection can no longer be subordinated to it. The reason for the rule, however, will probably still be carried out in applying the test of "reasonable care and promptness" in subsection (1).

The revised Code has dropped the ninety-day maximum time limitation in which to discover an alteration or forgery, which limitation applied in all cases in which there was not a good cause for a delay, and now relies only on the test of "reasonable care and promptness" established in subsection (1). It sets up a maximum reasonable time of "fourteen calendar days," however, to apply to other altered or forged items which have been paid by the bank after the first item was sent to the customer.

Subsection (3) is new in the revised Code. It will preclude a bank from taking advantage of the defenses given in this section whenever the customer can establish "lack of ordinary care on the part of the bank in paying the item(s)."

Subsection (4) merely restates the provisions of subsection (1) (c) of the 1952 Code.

Subsection (5) is completely new in the revised Code, and it eliminates the option which the bank was given under the 1952 Code to either charge the forgery loss to its customer or hold prior parties on the instrument under section 4-207 warranties.

The provision in subsection (2) of the 1952 Code which expressly permitted "good cause" excuses for failure to examine statements has been deleted. It is, however, still the law under the 1958 Code since the customer's duty, imposed by subsection (1) of the revised Code, is only a duty to exercise reasonable care.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS.

The entire Part 7 of Article 3 has been transferred *in toto* to Article 4, of the revised Code with a few minor changes. This was done because the subject matter is more aptly treated in that Article.

SECTION 4-501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR.

The revised Code has replaced the word "promptly" with the word "reasonably." This has been done to conform to the language of section 4-202 and it also avoids the possibility of any implication that a bank's duty to give notice is higher in the case of documentary drafts than its duty as regards other drafts.

SECTION 4-503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF NEED.

The text of the revised Code has expressly adopted the rule of section 2-514 which was alluded to only in the comments to the 1952 Code. This change makes it clear that the documents which accompany the draft are to be withheld until payment unless the draft is a time draft payable more than three days after presentment.

CONCLUSION.

The revised Code by its detailed provisions has solved many of the problems which existed under the former Code just as the former Code had solved many of the problems which existed under the prior law. However, if the revised Code should sometimes appear to be inadequate to serve as a panacea for all commercial problems, fault does not necessarily lie in any lack of perspicacity on the part of the reader or the writers. The revised Code leaves in doubt the solution to certain problems, but an element of doubt and confusion is bound to result from a statute of such magnitude. An illustration of such an inadequacy in the revised Code has already been pointed out in the case of a remitter in the impostor situation posed in subsection (1) (b) and (1) (c) to section 3-405. The spirit of the text would demand that the remitter be treated in the same way as the maker and drawer, but such treatment is not required by the express letter of the text.

In general, the achievement of the drafters of the revised Code is to be commended. The clarity which they sought has been, for the most part, realized in painstaking detail and organization. But criticism should also be forthcoming, not only insofar as a few comparatively insignificant problems have been left in doubt, but also in that the drafters of the revised Code frequently altered the law for no other reason than to conform to the recommendations of the New York Law Revision Commission, which so often failed to afford satisfactory reasons for warranting change.

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