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Unauthorized Use of Credit Cards and Some Related Questions: What Problems Remain?

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UNAUTHORIZED USE OF CREDIT CARDS AND SOME RELATED QUESTIONS: WHAT PROBLEMS REMAIN?

As a society and its commerce become more complex, unique legal problems often arise. Courts are often able to find solutions to those problems by simply extending existing law by analogy; in some instances, however, the problems posed are so different that existing law does not offer sufficient answers. When this occurs, the courts and legislatures are called upon to establish and mold a body of law which will sufficiently answer the peculiar problems that have been posed. Credit cards create problems of just such a nature. In fact, one writer has stated, "[t]he credit card holder is in a class by himself; he does not belong with any group heretofore recognized in the common law."[1] This comment is an analysis of how the law has met and dealt with unauthorized use of credit cards and the related problem of the defenses a holder[2] of a card may assert against the issuer.[3] More particularly, it will include a discussion of the cases and legislation that have attempted to solve these problems, the issues that have been left unanswered, and the problems, if any, that will result from these judicial and legislative solutions.[4]

Litigation involving unauthorized use of credit cards had its origin in 1915[5] when a court was first asked to charge the holder for purchases made with his lost credit token.[6] The Pennsylvania Court, faced with a new instrument of credit, looked to the old law of negotiable instruments for an answer to a novel legal question. It determined that the holder should in fact be held liable regardless of

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[1] Dalzell, *Credit Card Law*, 2 N.C. CENTRAL L.J. 43, 53 (1970).

[2] The term "holder" or "cardholder" in the context of credit cards is the person in whose name a card is issued.

[3] The issuer is the bank that provided the card and to whom payments are sent. *See* text accompanying notes 26-39 *infra*.

[4] To sufficiently analyze these problems and to help the attorney who may represent any of the parties involved in a credit card transaction, a general discussion of the credit card industry along with its social and economic implications is included below. Naturally, emphasis is given to the effect of 15 U.S.C. § 1643 (1970), which limits the liability of the holder of a credit card for unauthorized use thereof.

[5] *See* Wanamaker v. Megary, 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915).

[6] In *Wanamaker* the court was dealing with a credit coin. Although this coin was a simple two-party device, its use marked the beginning of an era in which credit devices grew rapidly in use (*see infra* notes 17-24 and accompanying text) and complexity (*see infra* notes 12-13 and accompanying text). In fact, as suggested below, there have been predictions that our society may someday substantially rely on credit cards for all retail transactions. *See, e.g.*, Barnes, *The Law, The Credit Card and the Coming of the Checkless Society*, 6 AM. BUS. L.J. 641 (1968); Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems*, 18 KAN. L. REV. 871, 872-73 & n.20 (1970).

any negligence on the part of the issuer.[7] Shortly thereafter, however, courts and lawyers realized they were facing a unique legal problem which could not be sufficiently explained by the existing law of negotiable instruments.[8] It was not until later that a court was willing to recognize that a duty to exercise due care should rest on both the merchant and consumer.[9] Questions regarding the duty of the merchant and the issuer have appeared in most of the later cases;[10] in fact, the basis of this legal duty and the degree of care it requires have been the source of most of the litigation regarding the question of who should be held liable for unauthorized use of credit cards.[11] Imputing liability for unauthorized use of credit cards has become a greater problem, partly because the relatively simple credit token of the early 1900's, which involved only two parties, has evolved into a much broader tripartite agreement.[12] In this newer three-party agreement an issuer has been added to a transaction which previously involved only

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[7] Wanamaker v. Megary, 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915).

[8] *See, e.g.*, Jones Store Co. v. Kelly, 36 S.W.2d 681 (Mo. 1931); Lit Bros. v. Haines, 121 A. 131 (N.J. 1923); *see also* Comment, *Credit Cards–A Survey of the Bank Card Revolution and Applicability of the Uniform Commercial Code*, 16 DE PAUL L. REV. 389, 401 (1967); Comment, *Sales: Credit Card Holder Liability for Unauthorized Purchases*, 20 OKLA. L. REV. 219, 220 (1967). 50 AM. JUR. 2d *Letters of Credit* § 38, at 428-29 (1970) states:

> From a legal standpoint, credit cards or their predecessors have been variously defined as, or held to be, negotiable instruments, mere identification cards, broad contracts of guaranty, assignments, third-party beneficiary contracts, or special, clean, revocable letters of credit. (footnotes omitted).

[9] *See* Gulf Ref. Co. v. Plotnick, 24 Pa. D. & C. 147 (C.P. of Lancaster Co. 1935), where the court held that since the holder was *negligent* in failing to notify the issuer, the holder would have to be responsible for the unauthorized use.

[10] *See, e.g.*, Gulf Ref. Co. v. Williams Roofing Co., 186 S.W.2d 790 (Ark. 1945); Rayor v. Affiliated Credit Bureau, Inc., 455 P.2d 859 (Colo. 1969); Thomas v. Central Charge Service, Inc., 212 A.2d 533 (D.C. Ct. App. 1965); Socony Mobile Oil Co. v. Greif, 197 N.Y.S.2d 522 (App. Div. 1960); Texaco, Inc. v. Goldstein, 229 N.Y.S.2d 51 (N.Y. Mun. Ct. 1962), *aff'd*, 241 N.Y.S.2d 495 (App. Div. 1963); Sears, Roebuck & Co. v. Duke, 441 S.W.2d 521 (Tex. 1969); Magnolia Petroleum Co. v. McMillan, 168 S.W.2d 881 (Tex. Civ. App. 1943).

[11] For an examination of whether the holder or issuer should be held liable *see infra* notes 40-84 and accompanying text.

[12] As the credit card agreement progressed it went through several stages. First, the credit tokens were replaced by cards which would be accepted by one or only a few merchants. These cards found wider use as petroleum companies adopted them. With national use, the collection of bills was centralized. However, more complexity was to come as independent groups began to issue credit cards, and thus evolved the true tripartite credit device. Of course, when the cards expanded from two to three parties the credit card became even more unique in a legal sense. For a thorough discussion of this progression *see, e.g.*, Cooper, *The Bank Credit Card Revolution and Articles 4 and 5*, 24 BUS. LAW. 133, 133-34 (1968); Dalzell, *supra* note 1, at 43-44; Comment, *The Tripartite Credit Card Transaction: A Legal Infant*, 48 CALIF. L. REV. 459, 459-63 (1960); Comment, *Credit Cards*, 57 NW. U.L. REV. 207, 207-08 (1962).

a holder and merchant. With this change the party issuing the credit card has become more remote from the holder.[13]

An Overview of the Historical Development of Credit Cards

Bank cards originated in the early 1950's,[14] but at first were restricted to regional use. Shortly thereafter, there was a phenomenal growth in both the number and use of bank cards.[15] Along with this growth, problems arose from credit card transactions and pressure developed to find better rules to answer the unique legal issues presented.[16]

In 1966, Bank Americard became the first bank card system to expand its regional operations to the national level;[17] at a later time it became international in scope.[18] Interbank Card, Midwest Bank Card, and Master Charge, observing the success with which national bank cards were being greeted, as evidenced by the explosive growth of Bank Americard, formed the Interbank Card system.[19] By late 1973, more than 35 million consumers carried bank cards.[20] In 1968, bank cards had outstanding credit of about one billion dollars;[21] and the loss from unauthorized use was estimated at $100,000,000 (as compared to only $20,000,000 in 1966).[22] By 1972 bank cards had outstanding credit of about $4.5 billion,[23] and the outstanding credit of all types of credit cards had risen to over $9.7 billion.[24] In fact, there have been predictions by some bankers that retail sales may eventually become substantially cashless.[25]

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[13] *See* Comment, *Sales: Credit Card Holder's Liability for Unauthorized Purchases, supra* note 8, at 220-21.

[14] *See* BUSINESS WEEK, Jan. 13, 1968, at 64; Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems, supra* note 6, at 871.

[15] All sources agree that the growth of the credit card industry has been exceptional, with one writer going so far as to call it a "revolution." *See* Cooper, *supra* note 12. *See generally* Williams v. United States, 192 F. Supp. 97, 98 (S.D. Cal. 1961); *Facts About National Bank Americard,* at 8 (Distr. by Nat'l Bank Americard, July, 1973) [hereinafter cited as *Facts About National BankAmericard*]; *Toward a Cashless Society,* TIME, Nov. 5, 1965, at 97a; Note, *Bank Credit Plans: Innovations in Consumer Financing,* 1 LOYOLA U. OF L.A.L. REV. 49 (1968).

[16] *See supra* notes 8-13 and accompanying text.

[17] *Facts About National BankAmericard,* at 7.

[18] TIME, July 12, 1968, at 66.

[19] *See* Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems, supra* note 6, at 872.

[20] *Facts About National BankAmericard,* at 8.

[21] BUSINESS WEEK, Dec. 7, 1968, at 53.

[22] Wall Street Journal, Dec. 22, 1969, at 19, col. 2.

[23] *A Data Stripe Puts Speed in Credit Cards,* BUSINESS WEEK, Sept. 16, 1972, at 68.

[24] *Id.*

[25] *See, e.g., Towards a Cashless Society, supra* note 15; *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems, supra* note 6, at 873 n.20.

Functioning of Bank Card Systems

The tripartite credit card clearly has an important place in today's economy, but to appreciate the legal implications of this device, a basic understanding of the mechanics of the bank card systems is essential.[26] The several bank card organizations are fundamentally similar in their operations.[27] An originating bank[28] chooses central banks (also referred to as "Class A" banks)[29] throughout the country. Each Class A bank coordinates all that system's operations within its designated territory; this includes serving as a billing office for charges made within that area, clearing charges made on cards issued by other central banks, and approving applications of consumers who wish to use the card and merchants who desire to accept such cards.[30] Class A banks deal with any problems resulting from authorized use; in addition, they suffer any loss not absorbed by holders or merchants. A merchant must agree to accept all valid cards issued by a particular system before a Class A bank will accept his application.[31] After a bank is chosen to be a Class A bank, it may designate other banks in its assigned geographical region as member or "Class B" banks. Class B banks, like Class A banks, may handle merchant accounts[32] and display the bank

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[26] This information regarding how a bank-card system functions was obtained in an interview with Mr. Jim Grant, Assistant Vice President, BankAmericard Dept. of First Security Nat'l Bank & Trust Co., in Lexington, Kentucky, Sept. 5, 1973 [hereinafter cited as Interview, Sept. 5, 1973].

[27] Interview, Sept. 5, 1973.

[28] An originating bank is that bank or group which started or presently makes up the operating nucleus of the system. There is, of course, only one for each system, so they delegate a great deal of authority and responsibility to other banks in the system.

[29] In the BankAmericard system, for example, there were 251 Class A members as of June 30, 1973. *Facts About National BankAmericard,* at 3.

[30] *Id.*

[31] Each merchant is required to sign a detailed agreement with the issuer which sets forth the duties of the merchant. For a copy of such an agreement *see* Davenport, *Bank Credit Cards and the Uniform Commercial Code,* 1 VALPARAISO L. REV. 218, 248-51 (1967). These merchant-issuer agreements have been the source of little, if any, trouble in the past. However, as the legislature has severely restricted agreements between issuers and holders (*see* 15 U.S.C. § 1643 (1970)), these merchant-issuer contracts may be forced to allocate the burden for losses that may have been on the holder in the past. Certainly, if this happens, they will receive much greater legal scrutiny. Nevertheless, because the bargaining power in issuer-merchant contracts is not particularly one-sided and since consumer advocates will not support either side, such agreements will probably be allowed; they more closely carry out the intent of the parties than did the court and legislature-restricted issuer-holder agreements. *See infra* notes 51-80 and accompanying text.

[32] Interview, Sept. 5, 1973. Each merchant participating in a bank-card system is required to keep an account in a member bank within that system. His account is credited (less a small discount) when he turns in his sales forms each day. The merchant may withdraw from this account as long as he keeps it above a certain level. After the merchant turns in the sales receipts they are sent to a

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card symbol, but they operate under the authority of a Class A bank.[33]

It is obvious that this system is designed to expedite administrative matters—not to prevent unauthorized use of credit cards. Integrated into the system, however, are means which are intended to reduce loss from unauthorized use of credit cards. Among the measures designed to prevent and minimize misuse are "floor limits",[34] "hot-card lists",[35] "expiration dates",[36] and "credit lines".[37] In the near future, even more innovative measures will probably be used—including pictures on cards[38] and computer identification of signatures or fingerprints. As banks suffer more losses from unauthorized use, they will be forced to develop more effective ways to reduce these expenses; and it is possible that they may eventually be able to eliminate such loss.[39]

Unauthorized Use of Credit Cards Prior to 1970

The scarcity of litigation involving unauthorized use of credit cards has been attributed to the fact that, "because of bad publicity, credit card issuers do not normally sue their cardholders whose cards have been lost or stolen and subsequently used by a thief to purchase merchandise."[40] This is certainly *one* of the reasons why

(Footnote continued from preceding page)
Class A bank, which then bills the cardholder. *See Facts About National BankAmericard,* at 4-5; Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems, supra* note 6, at 873-75.

[33] Interview, Sept. 5, 1973.

[34] A "floor limit" is the maximum amount that a merchant can sell by the use of a credit card without calling the issuer for verification. The call and consequent delay should discourage some fraudulent users from making large purchases. The system also helps compensate for the delay in listing lost cards on a "hot-card list". Interview, Sept. 5, 1973. For an explanation of "hot-card list", *see infra* note 35.

[35] A "hot-card list" is a list of numbers that reflects reported lost and stolen cards. It is interesting to note that if an issuer puts a wrong number on these lists, the person with that number *may* have a cause for libel or breach of contract against the issuer. *See* Annot., 46 A.L.R.3d 1383 (1972).

[36] "Expiration dates" are used so that a card, not reported lost or stolen, will eventually become invalid on its own. Of course, the date is printed on the credit card to call its invalidity to the attention of a merchant.

[37] A "credit line" is a maximum that a cardholder can owe the issuer at any time. The amount is adjusted to keep in line with the needs and experience of a holder. *Facts About National BankAmericard,* at 6. Certainly, these limits are used to prevent loss due to insolvent holders, but they also serve to put a limit on the amount of unauthorized purchases that can be made on any card.

[38] One writer suggests that photographs on cards would be an economical way to prevent much unauthorized use and that the cost of such a project could be limited to $.30 per card if holders provided the photographs. Murray, *A Legal-Empirical Study of the Unauthorized Use of Credit Cards,* 21 U. MIAMI L. REV. 811, 837 (1967). Some issuers are beginning to provide cardholders with cards bearing their photograph if the holder will come into a Class A bank and have his picture taken. Interview, Sept. 5, 1973.

[39] *See, e.g.,* Murray, *supra* note 38, at 837; Comment, *Bank Credit Cards—Contemporary Problems,* 41 FORDHAM L. REV. 373, 390-91 (1972).

[40] Comment, *Credit Cards—A Survey of the Bank Card Revolution and Applicability of the Uniform Commercial Code, supra* note 8, at 400.

there have been few cases involving misuse of credit cards. Since the cases to be discussed cover a period of time from 1915[41] until 1972[42] and because they are in conflict, it is impossible to draw any legal principles from them without some qualification. For this reason, the actual holdings of the courts in dealing with unauthorized use of credit cards will be surveyed first, followed by a discussion of some general principles which may be applicable today.

Basically, the case law developed around two categories of problems. In the early cases, the courts were faced with situations in which the liability for misuse was not contractually allocated; in most of the later cases[43] there has been a clause[44] in the contract which established who was to be held liable in the event of unauthorized use. Since almost all modern cases involve risk-allocation clauses, the importance of earlier cases, resolved without the benefit of such clauses, rests not on the precise holdings of such cases, but rather on the soundness of their reasoning and their value as precedent for courts in interpreting risk-distribution contracts.[45] Generally, the courts have taken three views in noncontractual allocation of liability cases. In *Wanamaker v. Magery*,[46] a Pennsylvania court reasoned that since the holder makes the loss possible, he should be responsible for the consequences. *Wanamaker* was a very early case in which the court found authority for its decision in the law of negotiable instruments.[47] Several years later, in *Gulf Refining Co. v. Plotnick*,[48] another Pennsylvania court took the view that each party had at least an implied duty to exercise a reasonable degree of care and that the court should engage in a balancing of responsibilities. The third view, appearing in certain later cases,[49] is that the issuer should have to bear the burden regardless of the holder's negligence.[50]

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[41] Wanamaker v. Megary, 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915).

[42] *See, e.g.*, Green v. First Nat'l Bank, 272 So. 2d 901 (Ala. 1972); Am. Nat'l Bank v. Rathburn, 264 So. 2d 360 (La. Ct. App. 1972).

[43] Clearly, most cases that would be litigated today would involve a risk-allocation clause. *See* 15 U.S.C. § 1643(a) (1970); 23 WASH. & LEE L. REV. 125, 128 (1966).

[44] These clauses, of course, vary a great deal, and some had even limited the cardholder's liability prior to the 1970 statute, 15 U.S.C. § 1643 (1970). For a typical clause *see* text accompanying note 57 *infra*.

[45] One should note that the subject of risk-allocation clauses is now controlled to a large extent by 15 U.S.C. § 1643 (1970). *See* text accompanying notes 94-99 *infra*.

[46] 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915).

[47] *Id.* at 779. *See also* Comment, *The Lost Credit Card: The Liability of the Parties*, 30 ALBANY L.J. 79, 80 (1966).

[48] 24 Pa. D. & C. 147 (C.P. of Lancaster Co. 1935).

[49] Thomas v Central Charge, Inc., 212 A.2d 533 (D.C. Ct. App. 1965).

[50] These holdings may look severe at first glance; however, the issuer is in the best position to absorb, administer, and distribute loss from unauthorized use. *See*

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The most significant cases, as previously stated, involve contracts in which an issuer has attempted to either minimize or eliminate any loss where a card has been improperly used. Clearly, if a risk-allocation clause is to impose liability on a holder, there must have been a manifestation of acceptance of the terms.[51] Generally, this only requires that the terms in the printed contract would have been seen by a reasonable man.[52] After establishing the existence of a contract, courts dealing with these cases have either read the clauses strictly and literally[53] or have loosely interpreted them and placed duties of good faith and diligence on issuers and merchants.[54] Hence, the courts are widely split on the issue of liability where there is a contract.[55]

The approach which reads the contract clauses strictly is well illustrated by the case of *Texaco, Inc. v. Goldstein*.[56] In that case, the

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Note, *Credit Cards: Distributing Fraud Loss*, 77 YALE L.J. 1418, 1423-28 (1968). It should also be noted that *Thomas* was litigated in a period of growing consumer protection, in which issuers had been contractually minimizing their losses as much as possible.

[51] *See* 3 A. CORBIN, CONTRACTS § 607 (rev. ed. 1960); 1 S. WILLISTON, CONTRACTS § 90 (3d ed. 1957) [hereinafter cited as WILLISTON].

[52] *See* WILLISTON § 90 c.

[53] *See* Mobile Oil Corp. v. Evans Glove Co., 303 N.Y.S.2d 103 (Sup. Ct. 1969); Uni-Serve Corp. v. Vitiello, 278 N.Y.S.2d 969 (Sup. Ct. 1967); Texaco, Inc. v. Goldstein, 229 N.Y.S.2d 51 (N.Y. Mun. Ct. 1962); Magnolia Petroleum Co. v. McMillan, 168 S.W.2d 881 (Tex. Civ. App. 1943).

[54] *See* Gulf Ref. Co. v. Williams Roofing Co., 186 S.W.2d 790 (Ark. 1945); Rayor v. Affiliated Credit Bureau, Inc., 455 P.2d 859 (Colo. 1969); Humble Oil & Ref. Co. v. Waters, 159 So. 2d 408 (La. Ct. App. 1963); Allied Stores, Inc. v. Funderburke, 277 N.Y.S.2d 8 (Sup. Ct. 1967); Union Oil Co. v. Lull, 349 P.2d 243 (Ore. 1960).

[55] Most writers recognize that the jurisdictions are split in their interpretation of risk-allocation clauses. *See, e.g.*, Dalzell, *supra* note 1, at 46; Comment, *The Lost Credit Card: The Liability of the Parties*, 30 ALBANY L. REV. 79, 85 (1966); Comment, *Contracts—Credit Card Liability Resulting From Unauthorized Use*, 12 DE PAUL L. REV. 150, 151-54 (1962); Comment, *Sales: Credit Card Holder's Liability for Unauthorized Use*, *supra* note 8, at 221; Comment, *Credit Cards: The Liability of the Card Holder for Unauthorized Purchases*, *supra* note 43, at 128. *But see* Annot., 15 A.L.R.3d 1086 (1967), which seemingly attempts to reconcile these views.

All cases do not clearly take either view, but some attempt a compromise between both. For instance, in Sears, Roebuck & Co. v. Duke, 441 S.W.2d 521 (Tex. 1969), the Texas court held that although the consumer-defendant was not negligent, the defendant, not the plaintiff, (who was both issuer and merchant) could only escape liability for unauthorized purchases by proving that Sears failed to exercise due care. The court in *Duke* based its decision on the contract by which Duke accepted liability for any purchases made on the credit card. *Id.* at 523. However, they held that if the defendant could bear the burden of proving the issuer was negligent, Sears would not be allowed to enforce the contract. *Id.* at 523-24. The basis for allocating the burden to Duke was that, "[i]n general, and subject to contrary agreement by the parties, the one who can best control the risk should assume it." *Id.* at 523. The court fails to mention, however, why the contract is not a "contrary agreement". Even so, there is validity in the argument that the holder is in the best position to prevent misuse of the card.

[56] 229 N.Y.S.2d 51 (N.Y. Mun. Ct. 1962).

clause by which Texaco sought to hold Goldstein liable for unauthorized purchases stated:

> This credit card confirms the authorization of credit during the period shown, to the person, corporation or firm whose name is embossed on the reverse side thereof. Such person, corporation or firm assumes full responsibility for all purchases made here-under by anyone through the use of this credit card prior to surrendering it to the company or to giving the company notice in writing that the card has been lost or stolen. Retention of this card or use thereof constitutes acceptance of all the terms and condition thereof.[57]

In *Goldstein,* the defendant's card was stolen and $569.98 in unauthorized charges were made before notice was given.[58] The New York Supreme Court found that the agreement was reasonable in its statement allocating liability for unauthorized use.[59] The court went on to hold that Goldstein was liable and, regarding whether a duty of due care rests upon the issuer, stated:

> [u]nless actual notice of loss is given to the company, it can have no way of knowing of such loss, and to require some thirty thousand dealers to suspect the loss of any particular card and use diligence against its abuse, is not within the requirements of plaintiff as the issuer of the credit card.[60]

The court explained that the mere imprint of a credit card on an invoice created a prima facie case for the issuer.[61] Although this approach could be extremely burdensome on a particular holder, it does find support not only in the contract, but also in the theory that a holder of a card is in the best position to prevent its unauthorized use.

The opposing view allows the holder to avoid liability where certain conditions, discussed below, are met. To accept this view a court must find a reason not to enforce a well drafted contractual agreement.[62] *Gulf Refining Co. v. Williams Roofing Co.*[63] is a typical case which adopts the view that these contracts do not have to be literally construed. Therein Gulf sued Williams Roofing Company, based on a risk-allocation clause, for money allegedly due from purchases made

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[57] *Id.* at 53.
[58] *Id.*
[59] *Id.* at 55.
[60] *Id.*
[61] *Id.* at 56.
[62] Another possible legal basis for not holding the consumer liable, not found in the case law, is the Uniform Commercial Code. *See infra* notes 76-84 and accompanying text.
[63] 186 S.W.2d 790 (Ark. 1945). *See also* cases in note 54 *supra.*

with a credit card issued to the defendant. Williams, notwithstanding the contract, proved that the purchases were not made with its permission; it proved, on the contrary, that the charges were made with a stolen credit card on which an authorized name had been forged. In fact, the court determined that the defendant had placed "Good for Truck Only"[64] on the face of the card while all the purchases were made by a man driving an automobile.[65] As a result, the court held that Gulf dealers were negligent and should not be able to collect the $975.84 which represented the forged invoice.[66] The court also found several indications of bad faith on the part of Gulf's dealers[67] and that the defendant had given notice within a reasonable time (although by then many of the purchases had already been made).[68] Although the impact of these findings is not entirely clear, the Arkansas court explicitly required not only that the issuer act in good faith, but also that he exercise a reasonable degree of care.[69] These requirements prevented the enforcement of a contract which stated that the holder "assumes full responsibility for all merchandise, deliveries, or services obtained by any person by its presentation."[70] The result of the view represented by this case is that good faith and reasonable care serve as conditions precedent to the existence of any contractual rights. Although this line of cases[71] may appear to ignore the reasonable understanding of the parties as to the nature of their agreement,[72] several lines of reasoning make this position quite attractive to courts. First, the courts are reluctant to uphold agreements where bargaining power is not evenly allocated.[73] Moreover,

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[64] 186 S.W.2d 790, 794 (Ark. 1945).

[65] *Id.* at 792.

[66] *Id.*

[67] *Id.* at 792-93, where the court explains that some of the dealers knew the forger, that several dealers had not correctly copied the forger's license plate number, and that much of the merchandise could not have been used on the automobile the forger was driving. Of course, if one who fraudulantly uses a credit card is found, he can be held liable in both civil and criminal actions. *See* 15 U.S.C. § 1644 (1970); Annot., 24 A.L.R.3d 986 (1969).

[68] 186 S.W.2d 790, 793 (Ark. 1945).

[69] *Id.* at 795.

[70] *Id.* at 794.

[71] *See supra* note 54. For another case that very explicitly takes this view, *see Union Oil Co. v. Lull*, 349 P.2d 243 (Ore. 1960), which held that an issuer could contractually limit his liability for unauthorized use only if he could bear the burden of proving that ordinary care was exercised to ascertain whether the person presenting the card had authority from the holder to do so.

[72] These issuer-holder agreements are not in any sense ambiguously drawn; therefore, it is clear that had the parties read that part of the contract they would have understood, as would any reasonable person, what it meant. *See, e.g.*, text accompanying note 70 *supra*.

[73] *See* 6A A. CORBIN, CONTRACTS § 1472 (rev. ed. 1962). *See generally* Comment, *Credit Cards: The Liability of the Card Holder for Unauthorized Purchases*, *supra* note 43, at 131.

courts note the growing importance of consumer protection and the fact that issuers and merchants are in a better position to absorb and distribute any financial losses.[74] Of course, by putting a duty to exercise care on issuers and sellers it may be possible to encourage action which will reduce the financial losses resulting from unauthorized use of credit cards.[75]

Where there has been a contract which imputed liability to the holder, the courts, through an application of general equitable doctrines as in *Gulf*, have most often refused to hold the consumer liable.[76] Several commentators[77] have suggested, however, that the courts should look to the Uniform Commercial Code to ascertain how best to solve credit card problems. These arguments have been based on the close resemblance of the credit card to transactions covered by the Code, such as letters of credit,[78] assignments of instruments,[79] and actions involving holders in due course.[80] If all jurisdictions would apply the Code to credit card problems this would provide uniformity, but it can be argued that since the Code does not explicitly apply to credit card transactions, its use would be little more than another attempt to fit a unique legal problem into established patterns of the law.[81]

On the other hand, there are persuasive arguments that the Code should be applied to credit card transactions.[82] It has been suggested that since the purpose of letters of credit (*i.e.*, to allow one person to buy something from a merchant based on the credit of another) is the same as the purpose of bank cards, Article Five of the Uniform Commercial Code should apply, at least in bank card transactions. Also,

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[74] *See supra* note 50.

[75] A duty on issuers may be particularly helpful. They are in an excellent position to minimize losses because an issuer is the only party who can establish more effective means of identification. *See, e.g.*, note 38 *supra*. Merchants, too, can help prevent loss by careful checking of "hot-card lists" (*see supra* note 35) and by following thorough identification procedures. Of course, in these situations the merchant was the person who lost control of the credit card.

[76] Gulf Refining Co. v. Williams Roofing Co., 186 S.W.2d 790 (Ark. 1945). For a list of other cases *see supra* note 54.

[77] *See generally* Cooper, *supra* note 12; Davenport, *supra* note 31; Comment, *Credit Cards—A Survey of the Bank Card Revolution and Applicability of the Uniform Commercial Code*, *supra* note 8; Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems*, *supra* note 6.

[78] *See* UNIFORM COMMERCIAL CODE art. 5 [hereinafter cited as U.C.C.].

[79] *See* U.C.C. § 9-206.

[80] *See* U.C.C. §§ 3-305, 3-805.

[81] *See, e.g.*, Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Card Systems*, *supra* note 6, at 890.

[82] *Id.* at 875.

there is the argument[83] that the drafters of the Code implicitly dealt with credit card use in Article Nine in which they stated:

> Subject to any statute or decision which establishes a different rule for buyers . . . , an agreement by a buyer . . . that he will not assert against an assignee any claim or defense which he may have against the seller . . . is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course. . . .[84]

What Defenses May a Holder Assert Against an Issuer?

Regardless which part of the Uniform Commercial Code is best fitted to handle credit card problems, its application would meet strong objection by consumer advocates. Such objection would arise because the Code, if applied without modification, would clearly prevent the holder of a credit card from asserting defenses he has against goods or a merchant in an action brought by the issuer of a bank card.[85] That is, a consumer is not ordinarily required to pay a merchant for shortages or to the extent goods are faulty;[86] however, the courts have not decided whether a holder of a credit card can raise such defenses against a remote issuer,[87] and consumer advocates would likely oppose the Code as long as these defenses may be valid if the Code is not applied. It may, however, be possible to look to the Code for guidance without depriving a holder of defenses he has against the merchant. Although there is no law in the credit card field dealing with goods-oriented defenses, there is some analogy to the situation in which a financing institution loans money so that a con-

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[83] *See* Comment, *Bank Credit Cards—Contemporary Problems, supra* note 39, at 382-83.

[84] U.C.C. § 9-206(1).

[85] *See, e.g.*, Comment, *Bank Credit Cards—Contemporary Problems, supra* note 39, at 383; Comment, *The Applicability of the Law of Letters of Credit to Modern Bank Systems, supra* note 6, at 887-88. One should also consider the effect of a contractual agreement whereby a holder agrees not to assert any defenses he has as to the goods against the issuer. Courts have upheld this type of agreement by following general contract principles and the Uniform Commercial Code. *See, e.g.*, Root v. John Deere Co., 413 S.W.2d 901 (Ky. 1967). There have not been any cases involving such clauses entered into by issuers and holders of credit cards. However, if they were to be considered, the law regarding risk-allocation clauses (see text accompanying notes 51-84 *supra*) would probably regain importance in this analogous context.

[86] *See generally* U.C.C. § 2-602.

[87] *See, e.g.*, note 77 *supra* for a list of articles suggesting application of the Code; however, none refer to any credit card case which has applied the Code. It is interesting to note that Wanamaker v. Megary, 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915), did apply the pre-Code law of negotiable instruments. *See* text accompanying notes 45-50 *supra*.

sumer may purchase particular goods. In these cases the courts have sometimes denied recovery to the lending institution upon default when goods were faulty, but liability has only been imputed to the lender in this manner where he either knew or should have known of a product's deficiency.[88] On its face it appears such results could be achieved through the Code's "good faith" requirement,[89] but the Code probably would not satisfy consumer advocates because the "good faith" requirement would not likely be stretched to require an issuer to determine whether any merchants who accepted his card sold defective products.

It has also been suggested that a holder could base his argument on the liability often imputed to one who advertises his approval of a particular product which turns out to be defective.[90] The argument that a bank should have a duty to insure that merchants who accept their cards do not sell defective products has a great deal of merit in the sense that issuers would be encouraged to be selective in their choice of participating merchants, thus encouraging merchants to sell better products and equalizing the bargaining power between consumers and merchants. Of course, consumer advocates would not want the holder to have to prove fault on the part of the issuer, but only that the merchant's product was faulty. However, to require the issuer to investigate participating merchants could have the effect of limiting merchant enrollment in the bank card system and make it necessary for the banks to charge service fees. As a result many of the advantages of bank cards would be undermined.[91] Moreover, even the "knew or should have known" test would leave the issuer in a precarious position in determining what he should know.

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[88] *See* Littlefield, *Good Faith Purchase of Consumer Paper: The Failure of the Subjective Test*, 39 S. CAL. L. REV. 48 (1966). *See* Connor v. Great Western Sav. & Loan Ass'n, 447 P.2d 609 (Cal. 1968); Unico v. Owen, 232 A.2d 405 (N.J. 1967).

[89] *See* U.C.C. § 1-203.

[90] Comment, *Bank Credit Cards–Contemporary Problems, supra* note 39, at 384-85.

[91] One of the attractive features of bank cards as opposed to other tripartite credit cards (*e.g.*, American Express) is that one may use them without any charge. Interview, Sept. 5, 1973.

George Mitchell, a member of the Federal Reserve Board, addressed the problem of what defenses a holder may assert against an issuer. On September 12, 1972, he suggested to a group of bankers that a system should be established so that issuers can respond to consumer complaints and that there should be a remedy for a holder who buys faulty merchandise. *See* U.S. NEWS AND WORLD REPORTS, Sept. 25, 1973, at 70. Since most consumers would not be aware of defenses they might be able to assert, it would also be helpful if this suggested system could be used to inform consumers of their rights. Mr. Mitchell said that a cardholder should be able to stop payment on his charges as he may with checks. He further explained, however, that the problem is in the issuer-merchant agreement (*see supra* note 31), which gives a holder no remedy outside of court. *Id.*

Questions regarding what defenses a holder may assert against an issuer and what duties, if any, an issuer has to assure quality in a merchant's product should require a delicate balancing of the factors discussed above; it will be most interesting to see how they are answered. As suggested, it would seem wise to allow these defenses to be raised against the issuer who acts in bad faith and against the negligent issuer, but the critical balancing will occur when a court must determine whether a particular issuer should have known that a merchant was selling a defective product. Since the issuer would have a cause of action against the merchant if his action against the holder was defeated because of the merchant's faulty product, banks may not face a great dilemma. Furthermore, banks require participating merchants to maintain a specific balance,[92] and they could increase that requirement for certain merchants and consider contractually requiring participating merchants to insure payments not tendered because of allegedly defective goods and to reimburse them for any expenses reasonably incurred in their collection efforts.[93]

1970 Amendments to the Truth-In-Lending Act

In the midst of confusion and uncertainty in the law regarding unauthorized use of credit cards, a need for uniformity became readily apparent. This uncertainty, along with a growing interest in consumer protection, stimulated Congress in 1970 to amend the Truth-in-Lending Act to include the following:

> Liability of holder of credit card—
>
> Limits on liability
>
> (a) A cardholder shall be liable for unauthorized use of a credit card only if the card is an accepted card, the liability is not in excess of $50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card . . . may occur. . . . Notwithstanding the foregoing,

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92 Interview, Sept. 5, 1973.

93 The crucial problem in dealing with issuer-merchant agreements is determining how the courts would treat them. *See supra* notes 31 and 91. That is, would they receive the close scrutiny that has been given to similar issuer-holder contracts? *See* text accompanying notes 51-84 *supra*. There is the argument that the issuer is in the best position to absorb, administer, and distribute loss resulting from unauthorized use (*see supra* note 50); and this argument may apply equally to the defective goods situation. On the other hand, as mentioned in note 31 *supra*, because of the more equal bargaining power (*see supra* note 73) and lack of pressure from consumer groups, it is unlikely that issuer-holder agreements would meet the same degree of scrutiny encountered by contracts between issuers and holders. *See, e.g., supra* note 54.

> . . . after the expiration of twelve months following such effective date [90 days following enactment on Oct. 26, 1970], no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer with the pertinent information whether or not any particular . . . agent of the card issuer does in fact receive such information.
>
> Burden of proof
>
> (b) . . . [T]he burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, . . . to show that the conditions set forth in subsection (a) . . . have been met.
>
> Liability imposed by other laws or by agreement with the issuer
>
> (c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.
>
> Exclusiveness of liability
>
> (d) Except as provided in this section, a cardholder incurs no liability from unauthorized use of a credit card.[94]

The statute is self explanatory; the issuer must bear the burden of proving unauthorized use. Furthermore, 15 U.S.C. § 1643(d) (1970) makes prior case law meaningless in those instances where liability was apportioned in the absence of any contractual obligation on the part of the holder to bear the burden of unauthorized purchases.[95] In addition, even though "applicable law" is retained under part (c), it has been limited to a minimal liability ($50). It may appear that absolute liability should have been placed upon the issuer, but the $50 limit has several advantages. It offers at least some inducement to the

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[94] 15 U.S.C. § 1643 (1970). Note that § 1643(c) makes the statute serve only as a maximum limit; thus, stricter state laws are encouraged. For an examination of these state statutes see Weistart, *Consumer Protection in the Credit Card Industry: Federal Legislative Controls*, 70 MICH. L. REV. 1475, 1538-43 (1972). If the laws are too strict, they do injustice to their purpose because they will not encourage issuers to solicit the help of cardholders in developing measures to minimize unauthorized use. *See* text accompanying notes 95-99 *infra*. Mr. Weistart suggests that even the $50 maximum liability is not large enough to encourage the dissemination of sufficient information to holders. Weistart, *supra*, at 1508-09. However, it appears to this writer that issuers should inform their holders of the $50 potential liability to discourage unauthorized use exceeding that amount; in fact, most issuers do so inform their holders and meet the other strict requirements of 15 U.S.C. § 1643 (1970). Interview, Sept. 5, 1973. Therefore, it further appears that most issuers believe the $50 limit is sufficient to encourage holders to give notice.

[95] *See* 15 U.S.C. § 1643(a),(d) (1970).

holder to prevent his card from being stolen or lost. Also, to take advantage of the $50 limit, issuers are forced to meet certain criteria which should help minimize losses from unauthorized use. For example, to meet these requirements and to reduce the chance of misuse, issuers may provide a place for holders to sign the card. This is at least a first step toward minimizing unauthorized use.

On the other hand, the statute appears to make the holder's duties of good faith and due care that had previously existed in some cases[96] less important, since banks were reluctant to sue even before there was a minimum.[97] This comprehensive statute has been made even more complete by the Federal Reserve Board through Regulation Z and through its "letter rulings". By the use of "letter rulings", the Board has stated that irrespective of the number of times a card is used without authorization, it was the intention of Congress to limit the total liability of the holder to $50;[98] and the Board has required that notice of the $50 liability be plainly visible on each card.[99]

What Problems Remain?

It is appropriate to discuss the problems this comprehensive statute[100] has left to be dealt with by regulations and further statutes and cases. The statute has virtually eliminated any necessity for courts to further evaluate the efficacy of their past holdings regarding allocation of the burden for unauthorized purchases as between the holder and issuer. However, these cases will still have some significance in determining who should bear the burden of unauthorized use as between the issuer and merchant. For policy reasons, if such a contest were to arise it would probably be best to hold the issuer responsible for any unauthorized use, unless the merchant was negligent or failed to act in good faith—after all, the issuer is in the better position to distribute any loss. One should also consider the possible outcome of a case wherein a court is asked to ascertain the effectiveness of a contract between a merchant and an issuer whereby the merchant agreed to pay for any unauthorized purchases made at his place of business. In

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[96] *See, e.g.*, Texaco, Inc. v. Goldstein, 229 N.Y.S.2d 51 (N.Y. Mun. Ct. 1962); Wanamaker v. Megary, 24 Pa. Dist. 778 (Phila. Mun. Ct. 1915); Magnolia Petroleum Co. v. McMillan, 168 S.W.2d 881 (Tex. Civ. App. 1943). *But see* Gulf Ref. Co. v. Williams Roofing Co., 186 S.W.2d 790 (Ark. 1945).

[97] "Because of a fear of bad publicity, credit card issuers do not normally sue their cardholder whose cards have been lost or stolen and subsequently used . . . to purchase merchandise." Comment, *Credit Card—A Survey of the Bank Card Revolution and Applicability of the Uniform Commercial Code, supra* note 8, at 400.

[98] *See Truth-in-Lending—Special Releases—Correspondence*, 4 CCH *Consumer Credit Guides* ¶ 30,641 (1971).

[99] *Id.* at ¶ 30,772, at 66,339 (1971).

[100] 15 U.S.C. § 1643 (1970).

this way the law regarding allocation of responsibility for unauthorized use of credit cards remains important. Prior case law may, therefore, apply by analogy and without regard to the $50 limit; however, the court hopefully will be more consistent than in the past in their placement of the burden and more logical in an evaluation of who is fairly and best able to bear the burden.

Another problem left by 15 U.S.C. § 1643 is the determination of whether it should protect only individual cardholders.[101] Certainly the original purpose of the act was not to protect corporate cardholders, but only individuals. In fact, the Federal Reserve Board originally interpreted the fraud provisions of the act as inapplicable to cards issued in a company name.[102] However, the Board has apparently changed its position and has amended Regulation Z to require application of the act to all credit cards.[103] As one writer explains, "[t]he trend is clearly toward imposing upon the issuer as heavy a burden as a reasonable interpretation of Truth-in-Lending will allow."[104]

Probably the most important question left unanswered by the statute is one which has always existed: What constitutes unauthorized use of a credit card? It is clear that the burden is on the issuer to show that the use was unauthorized.[105] In 15 U.S.C. § 1602(o), Congress offers the following insight into what they meant by the term "unauthorized use":

> The term 'unauthorized use' . . . means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.[106]

This definition of unauthorized use, which follows general agency principles,[107] has also been explicitly adopted by the Federal Reserve Board.[108] Reading it for its negative implication indicates that either

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[101] *See* Weistart, *supra* note 94, at 1513-18; Comment, *Bank Credit Cards—Contemporary Problems, supra* note 39, at 392 n.110. One court has applied the statutory limit to unauthorized use of a business credit card. *See* American Airlines, Inc. v. Remis Indus., Inc., [1969-1973 Transfer Binder] CCH CONSUMER CREDIT GUIDE ¶¶ 99, 123 (S.D.N.Y. 1972). However, the *Remis* court did so by applying New York law, not through an application of the federal statute. *See supra* note 94. The case, thus, leaves in issue whether 15 U.S.C. § 1643 applies to business credit cards.

[102] *See* 4 CCH CONSUMER CREDIT GUIDE ¶ 30,708 (1971); AM. JUR. 2d *Consumer Credit Protection* § 7 (1973) (New Topic Service).

[103] Federal Reserve Board Order of Aug. 3, 1972, 37 Fed. Reg. 16408 (1972).

[104] Comment, *Bank Credit Cards—Contemporary Problems, supra* note 39, at 392 n.110.

[105] *See* 15 U.S.C. § 1643(b) (1970).

[106] *See* 15 U.S.C. § 1602(o) (1970).

[107] *See* Weistart, *supra* note 94, at 1518.

[108] 12 C.F.R. § 226.13(a)(7) (1973).

authority or *any* benefit will cause the use to be deemed authorized.[109] This leads to some confusion because under the statute, if particular charges are not authorized, the holder is not relieved of any liability.[110] Although the statute and definitions are not clear with respect to whether partial benefit absolutely renders a particular use authorized, the better view would be to impute liability to the holder only to the extent he benefits.[111] Furthermore, this rule finds support in the law of restitution.[112] Even without this problem, it is easy to envision complicated litigation turning on the issue of whether a particular use was authorized.

Another related and very important question is the degree of the burden of proof that the statute requires an issuer to bear in order to prove that a purchase is authorized. Because these remaining issues are primarily ones of degree, they are best left to the courts; it is important, however, that consistent and logical guidelines be adopted. As suggested, these guidelines may be found in the statute, regulations, and, to some degree, in the previous case law.

The situation in which the necessity to determine what constitutes unauthorized use has typically arisen occurs where cards are issued jointly to two holders or to one holder who puts his card into the possession of his spouse. Under what circumstances will one holder be liable for purchases made with the card by the other party? Where marital difficulty occurs this type of problem is common. In an excellent article dealing with 15 U.S.C. § 1643, with regard to the meaning of "unauthorized use" in the family context, one author explains:

> Many issuers apparently feel that a cardholder should be held responsible for misuse of his card by anyone within his household. Indeed, an issuers' association has suggested that the reference to an absence of benefit in the definition of "unauthorized use" was intended to exclude from the statute uses "by a member of the family or household of the cardholder." [See Hearings on S. 721 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency, 91st Cong., 1st Sess., at 156, 159 (1969) (statement of Midwest Bank Card System, Inc.)] There is, however, no evidence that such misuses were intended to be excluded as a class. The mere fact of a familial relationship between cardholder and user does not suggest a basis for imposing liability, and these cases should be treated under the same principle that governs other applications of the statute. The cardholder will be liable in many of these situations because the family

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[109] Weistart, *supra* note 94, at 1522-23.
[110] 15 U.S.C. § 1643 (1970).
[111] *Accord*, Weistart, *supra* note 94, at 1522-25.
[112] *See generally* Wade, *Restitution for Benefits Conferred Without Request*, 19 VAND. L. REV. 1183, 1198-99 (1966).

> member's use is accompanied by sufficient indicia of authority to bind the cardholder. Other cases may present facts that justify imposing full liability upon the cardholder, as where the unauthorized family user secures necessities that the cardholder might have otherwise been obligated to provide. But these can be dealt with under general agency and restitutory concepts, and do not undermine the broad principle that the statute is not properly read as giving rise to general cardholder liability upon mere receipt of benefit.[113]

In *Socony Mobile Oil Co. v. Greif*,[114] a New York Court was faced with the issue of whether a husband could be held responsible for purchases made on his credit card by his estranged wife. The court, however, was able to avoid the question of exactly what constitutes unauthorized use, because the husband-defendant had given notice to Socony that he desired to cancel his credit card, but could not recover it from his wife. The court refused to hold the defendant-holder liable. When faced with a similar fact situation, another court reached the contrary result and held the defendant liable. In *Magnolia Petroleum Co. v. McMillan*,[115] a holder had loaned his card to another person who refused to return the card and, in fact, made unauthorized purchases. No notice was given here, however;[116] and one should further note that *McMillan* is a 1943 case and therefore of questionable value in the rapidly expanding field of credit card law. In both these cases it is noteworthy that the courts placed a great deal of emphasis on notice, even though the purchases might otherwise have been determined to be "authorized." Although the two cases are somewhat dated, they clearly make the point, of which the statute now requires all courts to take cognizance, that, where there is notice that a card is no longer to be honored, the issuer is responsible for all unauthorized purchases.[117] Moreover, as illustrated by the *Greif* case, notice is important in determining whether there was authority—*i.e.*, whether the purchases were authorized. Because of the important role of notice, attorneys should have their clients promptly inform the issuer in the event a credit card is lost, stolen, or likely to be used by an estranged spouse who no longer has permission to do so.[118]

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[113] Weistart, *supra* note 94, 1524-25 (footnotes omitted).

[114] 197 N.Y.S.2d 522, 523-24 (App. Div. 1960). Another case involving this husband-wife problem is American Nat'l Bank v. Rathburn, 264 So. 2d 360, (La. Ct. App. 1972), where the court would not impose liability on the holder unless he had expressly or impliedly made his wife his agent.

[115] 168 S.W.2d 881 (Tex. Civ. App. 1943).

[116] *Id.* at 882.

[117] 15 U.S.C. § 1643(a) (1970).

[118] It *may* be possible for a court to hold a cardholder liable, even beyond the $50 limit, if he acts in bad faith or in an extremely unreasonable manner in failing

(Continued on next page)

Conclusion

Other important questions remain, such as what constitutes unauthorized use where there is no notice, what defenses a holder may assert against an issuer of a card, and how great a burden the courts will place on issuers. In fact, the critical question that has existed since the courts first dealt with credit cards is still not completely answered—what law should apply to credit card transactions?[119] Certainly the $50 limit[120] on holder liability for unauthorized purchases has reduced the impact of these problems, but they still exist and will become more important as long as we continue to follow the path to a "cashless society".[121]

R. David Lester

(Footnote continued from preceding page)
to give notice. Before the statute was enacted, some courts applied the equitable doctrine of estoppel to prevent a holder from asserting his defenses. *See* Sinclair Ref. Co. v. Consolidated Van & Storage Co., 192 F. Supp. 87 (N.D. Ga. 1960); Neiman-Marcus Co. v. Viser, 140 So. 2d 762 (La. 1962).

[119] *See* text accompanying notes 1-4 *supra.*

[120] *See* 15 U.S.C. § 1643 (1970).

[121] This terminology is commonly used in describing the growing importance of the credit card. *See, e.g.*, Barnes, *supra* note 6, at 641 n.1.