

1-1-1954

# Chapter 9: Negotiable Instruments and Banking

Andrew A. Caffrey

Arthur B. Tyler

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/asml>

 Part of the [Banking and Finance Commons](#)

---

### Recommended Citation

Caffrey, Andrew A. and Tyler, Arthur B. (1954) "Chapter 9: Negotiable Instruments and Banking," *Annual Survey of Massachusetts Law*: Vol. 1954, Article 15.

## C H A P T E R 9

# Negotiable Instruments and Banking

ANDREW A. CAFFREY *and* ARTHUR B. TYLER

The failure of the General Court to enact into law the uniform Commercial Code was the most important event in this field during the survey year. Some significant decisions and statutes in commercial law and banking also merit discussion.

### A. COMMERCIAL LAW

**§9.1. The Uniform Commercial Code.** The code has as its purpose the complete revision and modernization of the statutory and, to a limited extent, the common law in such vital areas of commercial activity as sales, bills and notes, warehouse receipts, trust receipts, bills of lading, stock transfers, and security. Some of the existing statutory material in these fields dates back to before the turn of the century,<sup>1</sup> and for this reason much of it has become obsolete with the development of modern business usages.<sup>2</sup>

The code was prepared under the sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Twelve years of legal research and a sum in excess of \$400,000 have been spent by the sponsors in the preparation of the final draft of this legislation.

The code consists of ten separate articles each of which purports to modernize, systematize, simplify, and unify its own segment of commercial rules, and each of which is related to various other articles in such a manner as to produce one comprehensive and integrated law on all phases of private commercial activity. The articles have as their respective subjects: general provisions (and definitions); sales; commercial

ANDREW A. CAFFREY was Associate Professor of Law at Boston College Law School when this chapter was prepared. He is now Chief of the Civil Division of the office of the United States Attorney for the District of Massachusetts.

ARTHUR B. TYLER is Vice President and Counsel of the National Shawmut Bank of Boston.

§9.1. <sup>1</sup>Massachusetts adopted the Negotiable Instruments Law (G.L., c. 107) in 1898 (Acts of 1898, c. 533, effective January 1, 1899).

<sup>2</sup>Note that §§184-200 of Chapter 107 have never been involved in any opinions of the Supreme Judicial Court. These sections deal with the archaic topics of Acceptance for Honor and Payment for Honor.

paper; bank deposits and collection; documentary letters of credit; bulk transfers; warehouse receipts, bills of lading and other documents of title; investment securities; secured transaction, sale of accounts, contract right and chattel paper; and effective date and repealer.

Pennsylvania was the first state to adopt the Commercial Code. It has been in effect there since July 1, 1954.<sup>3</sup> Outside of Massachusetts the code has been introduced for adoption into law in about a dozen states. Study projects on the advisability of its adoption are now in progress in New Hampshire, New York,<sup>4</sup> Ohio, Texas, and California.

In Massachusetts the legislature on June 22, 1953,<sup>5</sup> established an unpaid Special Commission to study the code and the advisability of its adoption. The Commission in turn enlisted the services of law professors from Harvard and Boston College Law Schools and a representative group of attorneys from the Massachusetts, Boston, and Springfield Bar Associations. This group was aided considerably by student volunteers from Harvard and Boston College Law Schools in conducting a searching investigation of how the adoption of the code would affect existing Massachusetts law. Under the able editorship of Walter D. Malcolm<sup>6</sup> of the Boston Bar, this study group submitted to the Commission a 213-page report,<sup>7</sup> which is in effect an annotation of the entire code, analyzed in terms of its impact on present statutory or case law on all the matters embraced by the code.

The Commission reported favorably to the legislature by a six-to-three vote of its members in regard to adopting the code. The minority filed a vigorous opinion that action should be deferred until certain other commercially active states<sup>8</sup> adopt either the code or an interstate compact spelled out in the minority report as an appendix.<sup>9</sup>

Subsequent to the filing of this report, the General Court recommitted the entire matter for further study by another unpaid Recess Commission, which was directed to examine closely the minority report referred to above.<sup>10</sup> A report is due in January, 1955 from this most recent study.

**§9.2. Rights of the surviving joint tenant in a checking account.** A contest between the drawee bank and a surviving joint tenant of a checking account came before the Court in the case of *Smith v. Merchants National Bank of Leominster*.<sup>1</sup> There a husband and wife had a joint checking account at the defendant bank (hereafter called E). The account was opened in 1946, and the usual signature card provid-

<sup>3</sup> Pa. Stat. (Purdon), tit. 124.

<sup>4</sup> New York has appropriated \$200,000 for this study.

<sup>5</sup> Resolves of 1953, c. 61.

<sup>6</sup> Senior partner, Bingham, Dana, and Gould, Boston.

<sup>7</sup> Published as Massachusetts Annotations to the Proposed Uniform Commercial Code (1954).

<sup>8</sup> New York, New Jersey, Ohio, Illinois, Indiana, and Michigan.

<sup>9</sup> House No. 2400 (1954).

<sup>10</sup> Resolves of 1954, c. 121.

§9.2. <sup>1</sup> 330 Mass. 481, 115 N.E.2d 143 (1953).

ing that all funds on deposit should be their joint property payable to either or the survivor on death had been signed by the husband and wife. Either could draw checks on the account. During August, 1950, H, for reasons of personal convenience, deposited \$6390 belonging to his employer, X, in the joint account. H drew and delivered a check for \$6390 on this account on August 31, 1950, payable to the order of X, and this check endorsed for deposit to the credit of X was given to the Y bank, where X had its account. H died on September 4, 1950. The check was presented through banking channels to the E bank on September 5. E bank refused to pay the check because some of its employees had learned of H's death. On September 8 a conference between the officers of E and Y banks and X Company produced an agreement that the check would be paid. The check was presented to and paid by E bank on September 12, 1950. E bank was not officially notified of H's death until some weeks later. W, as surviving joint owner, brought an action of contract against the E bank, claiming (1) that the death of H terminated the agency of E bank to pay the check on the theory that the saving provisions of General Laws, Chapter 107, Section 17 do not apply to joint accounts, and (2) that even if they did apply, a payment made more than ten days after the date of the check would be outside the protection of the statute. The statute states: "A depository of funds subject to withdrawal by check or demand draft may pay a check or demand draft drawn on it by a depositor having funds on deposit to pay the same, notwithstanding his death, upon presentation within ten days after its date."

The Supreme Judicial Court held that the section (1) does apply to joint accounts, and (2) protects a drawee bank which pays a check after the death of the maker, one of the tenants of the account, provided the check was presented for payment within ten days of its date.

Both questions decided seem to be of first impression in this state.<sup>2</sup> The type of statute involved has been available as protection for both commercial and savings banks since 1885.<sup>3</sup> The early legislation covered both types of bank, while at present Section 17 is limited to "funds subject to withdrawal by check or demand draft," and the material on savings banks is now found in Chapter 168, Section 52.

The result reached in the *Smith* case would seem to be eminently just and desirable on the facts involved. The road taken to reach this result, while direct and easy for the Court to travel in a strong case like this one, may subsequently give rise to more difficult problems. Since the funds involved belonged to X and were subjected to the control of H's check-drawing power (and by the same token to W's check-drawing power) merely as a matter of convenience for H, it seems completely

<sup>2</sup> The Court properly distinguished the instant case from the only other cases in Massachusetts involving checks drawn by makers who died before the checks were paid by the drawee. In each of these cases the contest was between the administrator of the maker's estate and the payee of the check. *Burrows v. Burrows*, 240 Mass. 485, 137 N.E. 923 (1922); *Gallup v. Barton*, 313 Mass. 379, 47 N.E.2d 921 (1943).

<sup>3</sup> Acts of 1885, c. 210, §1.

proper that the funds reach X as their true owner. H or W had no beneficial claim to or ownership of these funds, and to have let the mere form of H's joint account prevail over X's equities would have been an abdication of substance to form.

It is interesting to note that the question of the check's possible operation as an equitable assignment of the funds in the hands of the drawee was not discussed.<sup>4</sup>

An additional point to be noted about the *Smith* opinion is the fact that the Court stated that payment may be made *more* than ten days after the date of a check whose drawer has since died. The Court noted that when so minded the legislature has demonstrated its familiarity with words calculated to impose a time limit or deadline;<sup>5</sup> hence from the absence of such a limitation on the time of payment of a check, once timely presentation has been made the Court concluded that none was intended. It would seem, therefore, that at the very least, a "reasonable time" after receipt of the proffered check is available was intended and that this reasonable time, however uncertain its duration may be, is not coterminous with the ten-day period for presentation of the check. Its length presumably will be determined by reference to the difficulty of investigating the facts material to arriving at an informed decision on whether or not to pay the check.

## B. BANKING

Activity in this field during the past year was entirely on the legislative side. The bulk of the new enactments dealt with cooperative banks. Some were specifically permissive statutes which enumerated various fiduciaries and custodians of funds and then explicitly authorized such persons to make deposits in cooperative bank shares and accounts. There were certain other changes largely designed to place the cooperative banks generally on a par with other banking institutions in these matters.

**§9.3. Cooperative bank statutes: Deposits.** Even prior to 1954 legislation, Chapter 170 of the General Laws was liberally worded and contained language which seems sufficiently broad to authorize cooperative banks to receive and hold deposits from practically any source.<sup>1</sup> However, to dispel any lingering fears that might have existed in the minds of certain fund custodians and to counteract a growing reluctance on the part of some trustees and other fiduciaries to invest funds under their control in cooperative banks, the legislature deemed it advisable to enact specific statutory grants of authority to such fiduciaries, inasmuch as similar legislation had been enacted in recent years specifically

<sup>4</sup> Of course, the check of itself cannot operate as an assignment of funds in the hands of the drawee. G.L., c. 107, §212. See *Fourth Street National Bank v. Yardley*, 165 U.S. 634, 17 Sup. Ct. 435, 41 L. Ed. 855 (1897).

<sup>5</sup> G.L., c. 107, §§17, 209.

§9.3. <sup>1</sup> G.L., c. 170, §§13 and 14.

authorizing them to deposit their funds for investment with savings banks or other designated competitive thrift associations. Nine such statutes were enacted during the last legislative session. These are specifically listed below with an explanatory note on each.<sup>2</sup>

**§9.4. Cooperative bank statutes: Limitation on holdings of paid-up shares in cooperative banks.** Chapter 170, Section 16 was amended<sup>1</sup> so as to raise the limitation on holdings of combined paid-up and saving shares in cooperative banks held by one person from thirty to forty shares, and those held by two persons jointly from sixty to eighty shares, thereby imposing the same limitation previously prescribed for serial shares.<sup>2</sup> Since serial shares automatically become paid-up shares at maturity, this amendment is in the nature of remedial legislation: the holder of forty matured serial shares, for example, may now allow them to remain in the bank as paid-up shares and proceed to rebuild his serial shares account.

**§9.5. Cooperative bank statutes: Employees' retirement.** Chapter 170, Section 51 was amended<sup>1</sup> to bring it into line with the laws relating to the Savings Banks Employees Retirement Association.<sup>2</sup> Prior to the amendment a participating bank's contribution for *future* services was limited to the amount of the employee's contribution or five percent of his salary, whichever was less. The amendment authorizes the bank to contribute an additional amount of not more than five percent of that part of such employee's salary which is not in excess of ten thousand dollars. Prior to the amendment a pension provided by contributions from a participating bank for the benefit of any employee

<sup>\*</sup> Acts of 1954, c. 47, amending G.L., c. 44, §54 (cities and towns).

Acts of 1954, c. 48, amending G.L., c. 44, §55A (municipal officers).

Acts of 1954, c. 126, amending the following sections: G.L., c. 32, §23 (public retirement systems); G.L., c. 34, §23 (trust funds held by counties); G.L., c. 90, §34D (deposits in lieu of automobile liability insurance); G.L., c. 121, §8A (funds on deposit with the Commissioner of Public Welfare); G.L., c. 122, §2B (funds on deposit with the Superintendent of the Tewksbury Hospital); G.L., c. 123, §39 (funds on deposit with the superintendent of each state hospital).

Acts of 1954, c. 179, amending G.L., c. 171, §21 (authorizing credit unions to deposit in "shares and accounts").

Acts of 1954, c. 276, amending G.L., c. 176B, §10 (medical service corporations), and G.L., c. 176C, §11 (corporations operating medical service plans).

Acts of 1954, c. 277, amending G.L., c. 176, §18 (authorizing fraternal benefit societies to deposit in "shares and accounts").

Acts of 1954, c. 309, amending G.L., c. 205, §19A (fiduciaries).

Acts of 1954, c. 311, amending the following sections: G.L., c. 201, §48A (conservators and guardians of the insane and spendthrifts); G.L., c. 206, §27 (executors, administrators, guardians, conservators, and trustees); G.L., c. 215, §41 (parties interested in estates in the process of settlement).

Acts of 1954, c. 312, amending G.L., c. 206, §25 (fiduciaries holding unclaimed funds), and G.L., c. 241, §34 (commissioners holding unclaimed proceeds of partitions of land).

§9.4. <sup>1</sup> Acts of 1954, c. 108.

<sup>2</sup> G.L., c. 170, §16.

§9.5. <sup>1</sup> Acts of 1954, c. 109.

<sup>2</sup> G.L., c. 168, §58.

was limited on account of *past and future* service to one half of the employee's salary for the five years preceding the date of his retirement. The amendment places a further limitation on the pension by adding the words "or five thousand dollars whichever is less."

§9.6. **Savings banks: Legal investments.** General Laws, Chapter 168, Section 54, Clause 15 was amended<sup>1</sup> so as to require the Commissioner of Banks to enlarge the list of legal investments which he must prepare not later than July 1 each year and a copy of which must be sent to each savings bank and each trust company having a savings department. The Commissioner is given authority to employ such expert assistants as he deems proper to aid him in preparing the list.

§9.6. <sup>1</sup> Acts of 1954, c. 486.