



UCC 3 & 4

Presented by:

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Paul is a partner in the law firm of Adams and Reese LLP. His primary focus is on Banking Law and legal issues dealing with payments system laws and regulations and bank operations issues. He has over 45 years of experience in the banking industry as a Bank Operations Manager, a consultant, an author, and an attorney. Mr. Carrubba is the author of six books including: *Revised UCC Article 3 and 4*, *A Banker's Guide to Checks* and *Principles of Banking*. He is the co-author, with Dan Fisher, of both *Remote Deposit Capture – Practical Considerations* and most recently, *Risk Management Series – Remote Deposit Capture*.

Presentation Content

THIS PRESENTATION IS DESIGNED TO PROVIDE ACCURATE AND AUTHORITATIVE INFORMATION REGARDING ITS SUBJECT MATTER.

IT IS PRESENTED WITH THE UNDERSTANDING THAT THE PRESENTER IS NOT RENDERING LEGAL, ACCOUNTING, OR OTHER PROFESSIONAL SERVICES.

IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICES OF A COMPETENT PROFESSIONAL PERSON SHOULD BE SOUGHT.

ARTICLES 3 & 4 OF THE UCC

- Scope and Subject Matter 3-102
 - Negotiable Instruments
 - Customer/Bank Relationship
 - Collection Process
- Variation by Agreement 4-103(a)
 - Provisions May Be Amended
 - Bank Cannot Disclaim Obligation to Exercise Ordinary Care

CHECK COMPONENTS

- Identification of Person to Whom a Check is Payable 3-110
 - Intent of Issuer
 - Issued by Automated Means – Intent of the Person Submitting the Payee Name
 - Payee Described by Office, Name, Number
 - Two or More Payees
- Date of an Instrument 3-113
 - Ante Date
 - Post Dated
 - Stale Dated
 - No Date

CHECK COMPONENTS

- Contradictory Terms 3-114
 - Typewritten Controls Printed
 - Handwritten Controls Both
- Incomplete Instrument 3-115
 - May be Completed as Authorized
 - Is an Alteration if Not Completed as Authorized
 - Burden of Proof is on Person Claiming Alteration
- Alterations 3-407
 - Unauthorized Change of the Terms of an Instrument
 - Alters the Obligation of the Parties
 - An Altered Item is Enforceable According to the Original Terms of the Instrument

PARTIES TO A CHECK & THEIR GENERAL LIABILITY

- Drawer 3-414
 - Will Pay Upon Dishonor
- Drawee 3-408
 - Is Not Liable on the Instrument
- Endorser 3-41
 - Will Pay Upon Dishonor and Timely Notice
- Acceptor-Certification 3-409
 - Agreement to Pay the Instrument
 - Amount Certified Should be Stated
- Issuer of a Cashiers and Teller Checks 3-412
- Liability for Refusal to Pay Cashiers Checks 3-411

DRAWER'S SIGNATURE AND FORGED SIGNATURE

- Person is Only Liable Upon Signing an Instrument 3-401(a)
 - Liability May be Created by a Representative 3-402(a) and (c)
- Form of Signature 3-401(b)
 - May be Made by Device or Machine
 - Mark, Symbol or Trade Name
- Multiple Signatures 3-403(b)



ENDORSEMENTS

- Endorsements in General 3-204
 - Signature to Negotiate the Instrument
 - Restrict Payment to a Person or for a Specific Purpose
 - Create Endorser Liability
- Obligation of Endorser is to Pay if Dishonored and Returned Timely 3-415
- Negotiation Requiring Endorsement 3-201(b)

ENDORSEMENTS

- Types of Endorsement 3-205
 - Special Endorsement –
“Pay to the Order of”
 - Blank Endorsement – Unrestricted
Blank Signature of Payee
 - Restrictive Endorsement –
“For Deposit Only”



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ENDORSEMENTS

- Two or More Payees 3-110
 - Joint Payees in the Alternative – Any of Them May Negotiate
 - Joint Payees Not in the Alternative – May Only be Negotiated by All of Them
- Wrong or Misspelled Name 3-204(d)
 - Endorse as Drawn, or
 - Endorse in the Correct Name, or
 - Endorse Both Names

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ENDORSEMENTS

- Depository Bank Becomes Holder of Unendorsed Check 4-205
 - Warrants Entitled Person Got the Proceeds
- Transfer and Presentment Warranties 3-416, 4-207, 3-417 and 4-208
 - Transferor Has Good Title
 - There Are No Forged Endorsements
 - Transferor Has No Knowledge of Forged Drawer Signature
 - No Alterations

HOLDER IN DUE COURSE

- Holder Defined 1-201(20)
 - Bearer in Possession
 - Identified Person in Possession
- Holder In Due Course 3-302
 - No Evidence of Forgery or Alteration
 - Value
 - In Good Faith
 - Without Notice of
 - Overdue or Dishonored
 - Unauthorized Signature
 - Any Claim
 - Defense or Claim

HOLDER IN DUE COURSE

- Holder In Due Course Takes Free of:
 - All Claims to the Instrument
 - All Defenses
- Holder Not In Due Course Takes Subject to:
 - Claims to the Instrument
 - Defenses
- Notice of Breach of Fiduciary Duty 3-307
 - Payment for Debt of Fiduciary
 - Personal Benefit of Fiduciary
 - Deposited to Account Other Than for Benefit of Person Represented

HOLDER IN DUE COURSE

- Notice of Breach of Fiduciary Duty (Cont.)
 - No Notice if Check is Payable to Fiduciary
 - Notice if Check is Payable to Taker if:
 - Payment for Debt of Fiduciary
 - Personal Benefit of Fiduciary
 - Deposited to Account Other Than for Benefit of Person Represented

***REASONABLE COMMERCIAL
STANDARDS IN THE
BANKING INDUSTRY***

**REASONABLE COMMERCIAL
STANDARDS**

- Ordinary Care
- Other Similarly Situated Banks
- Written Policies and Procedures
- Following Policies and Procedures
- Employee Training

CHECK FRAUD SCAMS

FORGED DRAWER'S SIGNATURE

- Drawer's Signature
 - Sign Drawer's Name
 - Sign Any Name
 - Forgery on Multiple Signatures
 - Facsimile Signature
- Reasonable Commercial Standards/Ordinary Care
 - Signature Verification – All
 - Signature Verification – Threshold
 - Random Sample
 - Fraud Detection System
 - Parameter Settings



FORGED ENDORSEMENT

- Forged Endorsement
 - Sign Payee's Name
 - Stamp Payee's Name
 - Forge One Name on Joint Payee Check
 - For Deposit Only
 - No Endorsement
- Reasonable Commercial Standards/Ordinary Care
 - Cashing Checks
 - Corporate Check Deposited
 - ATM Deposits
 - Notice of Breach of Fiduciary Duty



UNAUTHORIZED SIGNATURE AND ENDORSEMENT

- Ratification
 - After-the-fact
 - Had Knowledge
 - Applies to All Checks After Ratification
- Negligence Contributing to Forged Signature
 - Substantially Contributes
 - Ordinary Care – Reasonable Commercial Standards
 - Comparative Negligence
- Customer's Duty to Examine Statements and Report Forgery
 - Bank Makes Statement Available
 - Statement Contains Items or Description of Item
 - Report Unauthorized Signature or Alteration
 - Bank Exercise of Ordinary Care
 - Comparative Negligence

UNAUTHORIZED SIGNATURE AND ENDORSEMENT

- Conversion of a Check
 - Exercise of Possession Property of Another
 - Payee That Did Not Receive Delivery Precluded
 - No Claim by Drawer Against Drawee
 - Recovery May Not Exceed Interest in the Instrument
- Imposter and Fictitious Payee
 - Drawer Induced to Issue Check
 - Intent is Not to Have Person Named to Have Interest
 - Any Person in Possession is Holder
 - Endorsement is Effective
 - Endorsement Substantially Similar
- Employer's Responsibility for Fraudulent Endorsement by Employee
 - Employer's Endorsement
 - Employee has Responsibilities
 - Endorsement Substantially Similar
 - Comparative Negligence

COUNTERFEIT CHECKS

- Item Under the UCC
 - Not Properly Payable
 - Subject to Deadlines
 - No Warranty
- Duplicate Check Numbers
- Out of Sequence Numbers
- Counterfeit Cashier's Checks
- Easy to Create
- Positive Pay
- Treasury Checks

ALTERATIONS

- Payee Information
- Amount
- Postdated Check
- Presentment Warranty

LESS CASH DEPOSITS

- Deposit Part, Withdraw Part
- Oftentimes Stolen or Counterfeit
- Corporate Checks
- Counter Deposits Slips
- Establish Limits
- No Less Cash for New Accounts

CHECK KITING

- Kiting Types
 - The Payday Kite
 - Criminal Kiting for Dollars
 - Corporate Kite
- Multiple Banks
- One-Bank Kite
- Your Best Customers
- Account Relationship Officer

CHECK 21 FRAUD ISSUES

- Physical Fraud / Security Features
- Physical Features / Increased Fraud
- Signature Verification
- Impact on Fraud Detection Systems
 - Duplicates
 - Original and Substitute Check
 - Companion Pull
- Void on Check
- Funds Availability

CHECK 21 FRAUD ISSUES

- Fraudulent Recredit Claim
- Over the Counter Presentment of Substitution Check
- Manipulation of Image
- Creation of Duplicates
- Presentment of Original and Substitute Check
- Internal Fraud



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