PUBLICATION UPDATE

Route to: ☐ ____ ☐ ____ ☐ ____ ☐ ____
☐ ____ ☐ ____ ☐ ____ ☐ ____

Negotiable Instruments Under the Uniform Commercial Code

Publication 613 Release 86 March 2022

HIGHLIGHTS

- This release contains updates and revisions to provide the current status of the law, including developments in statutory, and regulatory law. The release includes discussion of several important recent developments and adds new and revised material on a number of significant topics.

Updated chapters include:

Chapter 16—Funds Transfers Under Article 4A. *Actual notice standard.* Following certification of a question from the Second Circuit, the New York Court of Appeals adopted an actual notice standard for purposes of triggering the statute of repose under Article 4A. *See In re Citibank August 11, 2020 Wire Transfers*, 520 F. Supp. 3d 390, 430 (S.D.N.Y. 2021), at § 16.01.

Strict liability. New York's version of the UCC imposes strict liability upon a bank that charges against its customer's account any "item" that is not "properly payable." *See Cardino v. J.P. Morgan Chase Bank, N.A.*, 2020 NY Slip Op 32616(U) (N.Y. Sup. Ct. 2020), at § 16.01.

State legislation. In 2021, New York passed the Consumer Credit Fairness Act, in which the term "original creditor" means "the entity that owned a consumer credit account at the date of default giving rise to a cause of action." The legislation also requires court filings to include more information about the debt targeted in a lawsuit, such as identifying the debt or account and providing proof that

the debt is owed to the plaintiff. The Act lowers the statute of limitations for consumer credit transactions from six years to three years, forcing creditors to file claims in a timely manner and protecting consumers from excessive interest charges and late fees. *See* § 16.01.

Unjust enrichment. A recent case reviewed an unjust enrichment claim in the context of housing and costs and fees paid to a university that curtailed in-person learning due to the Covid-19 pandemic. *See Hannibal-Fisher v. Grand Canyon Univ.*, 523 F. Supp. 3d 1087, 1098 (D. Ariz. 2021), at § 16.02[5]. In California, unjust enrichment is not a cause of action, but rather a general principle, underlying various legal doctrines and remedies; it is synonymous with restitution. *See Pedersen v. MidFirst Bank*, 527 F. Supp. 3d 188, 195 (N.D.N.Y. 2021), at § 16.02[5].

Acceptance by bank. A recent case explaining when a payment order is deemed "accepted" by a beneficiary's bank is *Allied Contracting II Corp. v. CTBC Bank Corp. (USA)*, 2020 NY Slip Op 31419(U), ¶¶ 6–7 (N.Y. Sup. Ct. 2020), at § 16.03[5].

Electronic funds transactions. Marrow v. Bank of Am., N.A., No. 2491, 2021 Md. App. LEXIS 520 (June 25, 2021) noted that no provision of Article 4 of Maryland's Commercial Law Article applies to electronic funds transactions such as the ATM withdrawals that were at issue in the case. *See* § 16.05[1].

Unauthorized transactions. Fla. Stat. § 670.501 permits the amendment of the one-year notice period for the customer to notify the bank of any unauthorized transaction by agreement. *See Rodriguez v. Branch Banking & Tr. Co.*, 529 F. Supp. 3d 1309, 1312 (S.D. Fla. 2021), at § 16.05[4].

Duty of ordinary care. Under § 4103(a) of the California UCC parties to an agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. *See Sarrouf Law LLP v. First Republic Bank*, 97 Mass. App. Ct. 467, 468, 148 N.E.3d 1243, 1245 (Mass. App. 2020), at § 16.14[3].

Erroneous payment orders. The Tenth Circuit held that payment as defined by § 4A-405(a)(iii) can occur when a beneficiary's account is credited and the funds immediately are made available to the beneficiary. *See Langston & Langston, PLLC v. Suntrust Bank*, 2021 U.S. Dist. LEXIS 157693 (S.D. Miss. Aug. 20, 2021), at § 16.15[1]. The Eastern District of Michigan dismissed a 2021 case against a bank when it refused to cancel or refund the transfer because it was not required to do under Article 4A. *See Kirschner v. Wells Fargo Bank*, 2021 U.S. Dist. LEXIS 229121 (E.D. Mich. July 19, 2021), at § 16.15[1].

Matthew Bender provides continuing customer support for all its products:

- **Editorial assistance—please consult the "Questions About This Publication" directory printed on the copyright page;**
- **Customer Service—missing pages, shipments, billing or other customer service matters, +1.800.833.9844.**
- **Outside the United States and Canada, +1.937.247.0293, or fax (+1.800.828.8341) or email (international@bender.com);**
- **Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.**



www.lexis.com

Copyright © 2022 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 613, Release 86, March 2022

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

Negotiable Instruments Under the Uniform Commercial Code

Publication 613 Release 86 March 2022

Check As Done

- ☐ 1. Check the Title page in the front of your present Volume 2. It should indicate that your set is filed through Release Number 85. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 85, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 86 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 2

Revision

☐	Title page.	Title page
☐	App. 2-B-1	App. 2-B-1

VOLUME 2A

Revision

☐	Title page.	Title page
☐	16-3 thru 16-33	16-3 thru 16-34.1
☐	16-45 thru 16-55	16-45 thru 16-55

VOLUME 2B

Revision

☐	Title page.	Title page
☐	App. 22-B1-73 thru App. 22-B1-79.	App. 22-B1-73 thru App. 22-B1-80.1
☐	App. 22-B1-91	App. 22-B1-91 thru App. 22-B1-92.1
☐	App. 27-A-1 thru App. 27-A-41	App. 27-A-1 thru App. 27-A-83
☐	App. 27-B-29	App. 27-B-29
☐	App. 27-B-57 thru App. 27-B-71	App. 27-B-57 thru App. 27-B-72.1
☐	TC-1 thru TC-97	TC-1 thru TC-101
☐	TS-1 thru TS-51	TS-1 thru TS-53

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



www.lexis.com

Copyright © 2022 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 613, Release 86, March 2022

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.