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ments, investment of reserves, and rental of units owned by the association may be taxed as corporate income.⁶¹ Reserves used for the improvement or replacement of the common elements might be taxed as constructive dividends and thus as income for unit owners.⁶² Where condominium marketing focuses on the profit potential for unit purchasers or the units are rented by the management on a pool basis when not occupied, the seller of the condominium units might also be involved in the offering of securities within the meaning of the federal Securities and Exchange Act of 1934.⁶³ Attention should also be given to possible application of the state Blue Sky laws.⁶⁴

Paul Lawrence

THE MINI-COMMERCIAL CODE: AN OVERVIEW OF CHAPTER 3

After years of consideration and debate, the Louisiana legislature in Act 92 adopted, with minor variations,¹ the Uniform Com-

for corporate debts limited to corporate property, and (vi) free transferability of interests." Treas. Reg. § 301.7701-2(9)(a) (1974). An organization will be taxed like a corporation if it more nearly resembles a corporation than a partnership or trust. See *Berger* at 1007-10; Note, 23 VAND. L. REV. 321, 327-28 (1970).

61. For a general discussion of the subject, see *Berger* at 1007-10; Brauer, *Federal Income Taxation of the Condominium Management Corporation*, 52 TAXES 196 (1974); Mancuso, *Some Aspects of Condominium Development*, 34 ALA. LAWYER 45, 58-60 (1973); Note, 23 VAND. L. REV. 321, 327-28 (1970).

62. Brauer, *supra* note 61, at 201. Complete disclosure of the financial status of the project is also required.

63. 15 U.S.C. § 78(c)(10) (1970). See Note, 27 OKLA. L. REV. 104, 107 (1974): "The ramifications of having one's development fall within such a classification are that the offeror would have to register with the SEC and all his salesmen would have to be licensed as brokers under the Act, rather than just being real estate salesmen under the applicable state law."

64. LA. R.S. 51:701-20 (Supp. 1972).

1. *E.g.*, some language of the original UCC provisions was changed to avoid reference to terms or concepts foreign to Louisiana law. See LA. R.S. 10:1-103, 3-207, 3-305, 3-419 (Supp. 1974) and comments thereto. References to unadopted sections of the UCC were also omitted. See LA. R.S. 10:1-105, 3-201 (Supp. 1974) and comments thereto. Some sections were deleted because they were considered either unnecessary or had not generally been received favorably in other jurisdictions. See LA. R.S. 10:1-108, 1-209 (Supp. 1974). The Louisiana draftsmen also changed the language used to define several terms to improve the UCC text. See LA. R.S. 10:1-201 (Supp. 1974) and comments thereto. To conform to LA. CODE CRV. P. art. 643, alternative payees are classified as necessary rather than indispensable parties. LA. R.S. 10:3-116 (Supp. 1974). A portion of UNIFORM COMMERCIAL CODE § 1-106 [hereinafter cited as UCC], dealing with consequential, special and penal damages was deleted to avoid conflict

mercial Code provisions on commercial paper.² The legislature's adoption of the Commercial Laws not only deprived the NIL of its last forum of operation³ but also worked some important changes in the regime governing commercial paper transactions in Louisiana.

In interpreting the new law, the Louisiana courts will be aided by the experience in other jurisdictions as well as by the comments of the Louisiana State Law Institute and those prepared by the joint sponsors of the UCC.⁴ The potential impact of the new uniform law in Louisiana has also received attention in previous issues of this *Review*.⁵ The following discussion seeks only to highlight important changes and to update prior articles.

Negotiability

A good example of the UCC's attempt to settle the conflicts among the NIL courts while not departing radically from the prior law can be found in the provisions dealing with the requisites for negotiability. Although the Commercial Laws retain the general rule that a negotiable instrument must contain only an unconditional promise to pay a sum certain in money,⁶ promises designed to protect collateral or to give additional collateral on demand now clearly do not affect negotiability.⁷ Likewise, by broadly validating any acceler-

with LA. CIV. CODE art. 1934, which defines the standard for awarding damages for breach of contract. To retain the rules contained in LA. CIV. CODE arts. 2277-78 and 2441, dealing with parol evidence, UCC § 1-206 was not adopted. Section 3-118(e) was altered to preserve the rule of *Watkins v. Haydel*, 172 La. 826, 135 So. 371 (1931), that the words "we promise to pay" binds the makers jointly, rather than jointly and severally (*in solido*) as under the UCC.

2. LA. R.S. 10:3-101 to -807 (Supp. 1974). In addition to the provisions on commercial paper, articles 4 and 5 of the UCC dealing with bank deposits and collections (LA. R.S. 10:4-101 to -504 (Supp. 1974)) and letters of credit (LA. R.S. 10:5-101 to -117) were also adopted. The articles are preceded by a general provisions section. LA. R.S. 10:1-101 to -209 (Supp. 1974).

3. Mississippi joined the rest of the country in adopting the UCC effective March 31, 1968, leaving Louisiana as the sole state applying the NIL.

4. *Introduction to R. HERSBERGEN, COMMERCIAL PAPER AND BANK DEPOSITS AND COLLECTIONS IN LOUISIANA: THE COMMERCIAL LAWS*, at iii (1974).

5. For more detailed discussions of the various areas affected by the Commercial Laws, see *The Effect of the Adoption of the Proposed Uniform Commercial Code on the Negotiable Instruments Law of Louisiana: A Student Symposium*, 16 LA. L. REV. 89 (1955); Comment, 15 LA. L. REV. 403 (1955); Comment, 15 LA. L. REV. 419 (1955).

6. LA. R.S. 10:3-104(1)(b) (Supp. 1974). The same requirements under the NIL were found in LA. R.S. 7:5, 7:6 (1950) (repealed 1974).

7. LA. R.S. 10:3-112(1)(c) (Supp. 1974). Hawkland, *Some Observations Concerning Article 3 of the Uniform Commercial Code*, 26 LA. L. REV. 228, 246 (1966) [hereinafter cited as *Hawkland*]; Comment, 15 LA. L. REV. 403, 411 (1955).

ation clause, section 3-109(1)(c) rejects the view of one Louisiana decision⁸ that an acceleration clause rendered the time of payment uncertain and the note non-negotiable.⁹

Consistent with the theme of continuing the general NIL rule while clarifying troublesome ambiguities is the treatment accorded by the Commercial Laws to the sum certain requisite for negotiability. Without derogating from the demand that a negotiable instrument be payable for a sum certain,¹⁰ the 1974 law allows the parties to provide for a discount for early payment without thereby rendering the sum uncertain.¹¹ The provision, clearly a recognition of commercial necessity, is bottomed on the notion that, although a discount clause may prevent prediction with mathematical exactitude of the sum that eventually will be paid, the discount rate used by bankers is based on enough of a "commercial certainty" not to destroy negotiability.

While the NIL used the words "fixed or determinable future time" to specify when an instrument must be payable to be negotiable,¹² the Commercial Laws require that the note be payable at a "definite time."¹³ The increased specificity apparently demanded by the new language is affirmed by section 3-109(2) which precludes predicating payment upon the happening of an event "uncertain as to time of occurrence." The chief significance of this change will be to render notes payable after the expiration of a certain period following the death of a specified person non-negotiable, reversing the NIL rule imputing negotiability to such "post-obituary notes." However, the intended result of the change is somewhat diluted by the validation of acceleration clauses; the prohibition can be easily avoided by providing for acceleration of a long-term note upon the death of an individual.¹⁴

While it is still true that a negotiable instrument must contain an unconditional promise to pay money,¹⁵ the Commercial Laws' defi-

8. *Hibernia Bank & Trust Co. v. Dresser*, 132 La. 532, 61 So. 561 (1913). *Contra*, *Merchants & Marine Bank v. Hibernia Bank & Trust Co.*, 16 F. Supp. 433 (E.D. La. 1936); *Mechanics & Metals Nat'l Bank v. Warner*, 145 La. 1022, 83 So. 228 (1919).

9. See *Hawkland* at 240, 246; Comment, 15 LA. L. REV. 403, 415 (1955). LA. R.S. 10:3-109(1)(d) (Supp. 1974) provides also that an instrument is payable at a definite time if it is payable "at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker. . . ."

10. LA. R.S. 7:1 (1950) (repealed 1974).

11. LA. R.S. 10:3-106 (Supp. 1974).

12. LA. R.S. 7:1(3) (1950) (repealed 1974).

13. LA. R.S. 10:3-104(1)(c) (Supp. 1974).

14. *Hawkland* at 241-42.

15. LA. R.S. 10:3-104(1)(b) (Supp. 1974). The same requirement under the NIL was found in LA. R.S. 7:1(2) (1950) (repealed 1974).

dition of an unconditional promise¹⁶ differs somewhat from that formulated in the NIL jurisprudence. A promise to pay out of a particular fund no longer renders the promise conditional "if the instrument is issued by a government or governmental agency or unit."¹⁷ The "particular fund" doctrine of the NIL is further modified by section 3-105(1)(h) which provides that a promise to pay out of the assets of a partnership is not conditional even if the partners are not individually liable on the instrument.

Louisiana was among the minority of jurisdictions under the NIL following the "single sentence" doctrine, adopted by our courts in *Continental Bank & Trust Co. v. Times Publishing Co.*¹⁸ and *Tyler v. Whitney-Central Trust & Savings Bank.*¹⁹ In the *Times* case, the court held that the words "as per contract" appearing in the same sentence as the promise rendered the instrument non-negotiable on the premise that these words conditioned the promise on the terms of the contract; in *Tyler*, on the other hand, similar words in a sentence separate from the promise were found neither to condition the promise nor to destroy negotiability. Section 3-105 clearly abandons as a criterion for negotiability the positioning of reference to extraneous agreements and adopts the NIL majority rule which substitutes as the controlling factor the use of particular terms; if the instrument states that it is "subject to" or "governed by" another agreement, the promise to pay is conditional while the words "as per contract," regardless of their placement, will not cause the promise to be conditional. Thus, not only are *Tyler* and *Times* overruled, but the holding of *Newman v. Schwarz*²⁰ that the words "note subject to terms of lease" did not render the note non-negotiable is reversed by the Commercial Laws.²¹

Holder in Due Course

The question whether a holder is a holder in due course is a pivotal determination under the Commercial Laws, as it was under the NIL.²² While the requisites for achieving holder in due course

16. LA. R.S. 10:3-105 (Supp. 1974).

17. LA. R.S. 10:3-105(1)(g) (Supp. 1974); *Hawkland* at 238-40. Comment, 15 LA. L. REV. 403, 409 (1955). Notations for convenience neither limit the promise to a particular fund nor render the promise conditional. See LA. R.S. 10:3-105 (1)(f) (Supp. 1974).

18. 142 La. 209, 76 So. 612 (1917).

19. 157 La. 249, 102 So. 325 (1924).

20. 180 La. 153, 156 So. 206 (1934).

21. *Hawkland* at 232-34; Comment, 15 LA. L. REV. 403, 409 (1955).

22. The primary effect of holder in due course status is the cutting off of all claims and defenses except those specifically set forth in LA. R.S. 10:3-305 (Supp. 1974).

status remain basically unchanged, some differences are noteworthy. For instance, the mere fact that an instrument is not complete and regular on its face no longer in itself prevents the holder from being a holder in due course. Rather, the defects must be such as to put him *on notice* of defenses before he will be deprived of the status.²³ Additionally, that the instrument is overdue will not automatically prevent its holder from being a holder in due course, as was the case under the NIL.²⁴ He must have *notice* of the overdueness to be disqualified.²⁵

The apparent shift of the Commercial Laws toward a more subjective standard in these two instances is offset by the infusion of a more objective content into the general concept of notice.²⁶ Thus, in contrast to the actual knowledge-bad faith standard of the NIL, section 3-304 details circumstances when the purchaser will be *deemed* to have notice of overdueness, claims, or defenses.²⁷

The longstanding conflict as to whether a payee can be a holder in due course is resolved by section 3-302 of the Commercial Laws; the payee can achieve the status if he meets the normal requisites. The significance of this clarification will be limited because in most instances the payee will have notice of any defenses the maker has and would not qualify as a holder in due course.²⁸ Moreover, if there are no assertable defenses, holder in due course status offers no advantage to a payee, who is already a holder, except to require of him a less demanding presentment and transfer warranty regarding material alteration and the validity of the signature of the drawer or maker.²⁹

Although a party must still give "value" in order to be a holder

23. LA. R.S. 10:3-302(1)(c), 3-304(1)(a) (Supp. 1974); Comment, 15 LA. L. REV. 419, 420 (1955). See LA. R.S. 7:52(1) (1950) (repealed 1974).

24. LA. R.S. 7:52(2) (1950) (repealed 1974).

25. LA. R.S. 10:3-302(1)(c) (Supp. 1974); Comment, 15 LA. L. REV. 419, 427 (1955).

26. Comment, 15 LA. L. REV. 419, 424 (1955).

27. LA. R.S. 10:3-304 (Supp. 1974) sets out instances in which the facts are such that the purchaser will not be heard to say he was without notice. This approach, along with § 3-304(3) whereby "reason to know" of certain facts amounts to notice, and the general definition of notice in § 1-201 indicate that notice introduces an element of objectivity into the two prong test of § 3-202, *i.e.*, good faith and notice. The subjective standard of good faith is nevertheless retained.

28. One narrow situation in which this change will have an impact is where A fraudulently induces the maker to sign and deliver an instrument payable to P, and P pays A for it in good faith and without notice of the fraud. In such a case, P would be a holder in due course. LA. R.S. 10:3-302(2) (Supp. 1974) & comment 2(D); Comment, 15 LA. L. REV. 419, 431 (1955).

29. LA. R.S. 10:3-417(1)(b), (c) (Supp. 1974).

in due course,³⁰ the Commercial Laws revise somewhat the meaning of "value." The NIL rule³¹ that a collecting bank giving provisional credit for a negotiable instrument has not given "value" is retained and extended by the Commercial Laws so that *any* executory promise to give value is not itself "value" except when a holder "gives a negotiable instrument or makes an irrevocable commitment to a third person."³² As explained by the comments to section 3-303(c), the reason for this change is that a purchaser discovering defenses or defects in his transferor's title can rescind the transaction for breach of the 3-417 warranties without loss to himself if the only consideration he has given is an executory promise. Thus, the prime advantage of holder in due course status—cutting off defenses and claims—is no longer necessary.

Transfer and Negotiation

A major change wrought by the Commercial Laws is the reversal of the "once bearer paper-always bearer paper" rule. The NIL provided that an instrument was bearer paper if the only or last indorsement was in blank³³ and that even if a bearer instrument was indorsed specially, it could nonetheless be further negotiated by delivery.³⁴ Under the Commercial Laws, a specially indorsed instrument may be further negotiated only by indorsement of the special indorsee even if the instrument was at one time bearer paper.³⁵ Now, an instrument payable to order but indorsed in blank becomes bearer paper until specially indorsed again, thus establishing the maxim that the last indorsement controls the character of the paper.

Liability of Parties

When a negotiable instrument has been materially altered at some point between issuance and presentment, the attendant loss must be borne either by a party liable on the instrument or by the holder seeking to enforce the promise to pay. Under the NIL, a holder who was *not* a holder in due course could not enforce a materially altered instrument against any party liable thereon who did not assent to the alteration.³⁶ Under the Commercial Laws, a party is dis-

30. LA. R.S. 10:3-302(1)(a) (Supp. 1974).

31. LA. R.S. 7:54 (1950) (repealed 1974).

32. LA. R.S. 10:3-303 (Supp. 1974); Comment, 15 LA. L. REV. 419, 429 (1955).

33. LA. R.S. 7:9(5) (1950) (repealed 1974).

34. LA. R.S. 7:40 (1950) (repealed 1974).

35. LA. R.S. 10:3-204 (Supp. 1974); *Hawkland* at 242-43.

36. LA. R.S. 7:124 (1950) (repealed 1974).

charged only if the alteration, made by the holder, is fraudulent and changes the party's contract.³⁷ Otherwise, the holder may enforce the instrument according to its original tenor.³⁸

A holder in due course, on the other hand, is afforded greater protection under both commercial paper regimes. He may always enforce a materially altered instrument according to its original tenor,³⁹ and section 3-406 retains the *Young v. Grote*⁴⁰ rule that a holder in due course may even enforce an instrument as altered if the obligor's negligence was a factor substantially contributing to the alteration.

According to the NIL, the unauthorized completion *and* delivery of an instrument was a real defense, assertable against a holder in due course,⁴¹ although neither unauthorized completion nor unauthorized delivery alone was more than a personal defense.⁴² In recognition that the holder in due course is in the same position whether only one of these events takes place or they concur,⁴³ the Commercial Laws reduce unauthorized completion *and* delivery to a personal defense.⁴⁴

In the "imposter" and "fictitious payee" situations, both the NIL and the Commercial Laws protect the good faith purchaser by placing the risk of loss on the drawer or maker. Under the NIL, a fictitious payee instrument was deemed bearer paper, thereby making the payee's indorsement irrelevant, if the drawer or maker had actual or imputed knowledge that the named payee was fictitious.⁴⁵ In the "imposter" situation, although the drawer or maker had no knowledge that the named payee was not the party with whom he was dealing, the holder was protected under NIL jurisprudence by deem-

37. LA. R.S. 10:3-407(2) (Supp. 1974). The Commercial Laws erect a much more difficult burden of proof than did the NIL to avoid an altered instrument. See *People's Bank & Trust Co. v. Thibodeaux*, 172 La. 306, 134 So. 100 (1931) (discharging maker where it could not be determined who had altered the instrument); *Simmons v. Green*, 138 So. 679 (La. App. 2d Cir. 1932) (allowing instrument to be avoided where changes were made in good faith). See generally Comment, 16 LA. L. REV. 105 (1955).

38. LA. R.S. 10:3-407(3) (Supp. 1974); LA. R.S. 7:124 (1950) (repealed 1974).

39. LA. R.S. 10:3-407 (Supp. 1974); LA. R.S. 7:124 (1950) (repealed 1974).

40. 130 Eng. Rep. 764 (C.P. 1827). See generally Comment, 16 LA. L. REV. 134 (1955).

41. LA. R.S. 7:15 (1950) (repealed 1974).

42. LA. R.S. 7:14, 7:16 (1950) (repealed 1974).

43. *Hawkland* at 243-44; Comment, 15 LA. L. REV. 419, 433 (1955).

44. LA. R.S. 10:3-115, 3-407(3) (Supp. 1974).

45. LA. R.S. 7:9(3) (1950) (repealed 1974). Knowledge of an agent or employee that the payee was fictitious was imputed to the drawer or maker. The drawer was presumed to have intended to pay a party other than the named payee. *Hawkland* at 244-45; Comment, 16 LA. L. REV. 115, 117 (1955).

ing it the intent of the drawer or maker to deal with the party standing before him; thus, title passed to the imposter and his indorsement was valid to negotiate the instrument.⁴⁶ Under the Commercial Laws, an indorsement in the name of a named payee by *any* person is effective to negotiate either type of instrument,⁴⁷ thus reaching the same result as did the NIL without resorting to the "bearer paper" or "intent to deal" fictions. This new legal construct also allows the protection afforded in imposter situations to be extended to inducements through the mail and other non-arm'slength situations.⁴⁸

The transfer warranties imposed by section 3-417(2) are very similar to those under NIL sections 65 and 66 except that the indorser's warranty now clearly extends beyond his immediate transferee to all subsequent holders.⁴⁹ In addition, the Commercial Laws, unlike the NIL, clearly impose upon one transferring an instrument for consideration the obligation to warrant that no defense of any party is good against him.⁵⁰ However, the warranty is limited to one of *lack of knowledge* of any defenses if the indorsement is without recourse.⁵¹

Section 3-417(1) outlines the newly created presentment warranties given by the one who obtains payment or acceptance and by all prior transferors to any party who pays or accepts in good faith. The presentment warranties are less inclusive than those given under 3-417(2) to transferees⁵² because the limitations of *Price v. Neal*⁵³ are embodied in section 3-417(1). Under the *Price* rule, a drawee who has paid an instrument bearing a forged signature of the drawer may not recover since drawees are held to know their customers' signatures. This rule does not apply, however, when the instrument bears a forged necessary indorsement, for although the party obtaining payment or acceptance may be in good faith and payment to him is therefore final, he has breached the 3-417(1) warranty of good title to the instrument.

46. Comment, 16 LA. L. REV. 115, 117 (1955).

47. LA. R.S. 10:3-405 (Supp. 1974).

48. LA. R.S. 10:3-405(a) (Supp. 1974).

49. LA. R.S. 7:65 (1950) (repealed 1974) limited a qualified indorser's warranty to his immediate transferee and LA. R.S. 7:66 (1950) (repealed 1974) stated that the warranty given by general indorsers extended only to subsequent holders in due course. The Commercial Laws extend the warranty of *all* indorsers to all subsequent *holders*.

50. LA. R.S. 10:3-417(2)(d) (Supp. 1974).

51. LA. R.S. 10:3-417(3) (Supp. 1974).

52. The transfer warranties of 3-417(2) do not extend to payors, as payors are not considered transferees. J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE, § 15-5 (1972).

53. 97 Eng. Rep. 871 (K.B. 1762).

Circuity of Actions

The pre-Commercial Laws decisions of Louisiana courts in *Smith v. Louisiana Bank & Trust Co.*⁵⁴ and *M. Feitel House Wrecking Co. v. Citizens Bank & Trust Co.*⁵⁵ fashioned circuity of actions rules designating the channels to be followed by the parties in suing one another to apportion losses suffered when an instrument is stolen. Under these cases, the payee of an instrument from whom possession had been wrongfully acquired and whose indorsement had been forged could maintain an action only against the drawer on the underlying obligation.⁵⁶ The drawer could then recover from the drawee because the latter had paid an instrument with a forged indorsement which was therefore not "properly payable."⁵⁷ Although the NIL transfer warranties⁵⁸ enjoyed by holders were not available to any of the banks in the collection process since the absence of the indorsement of the true owner prevented them from being holders,⁵⁹ the drawee could recover from any of the intermediary collecting banks on the express warranty common to the bank collection process that "all indorsements [are] guaranteed." Collecting banks, in turn, had a similar right against the depositary bank, and the depositary bank would be left to the normal rights of action incident to the depositary bank-depositor relationship.⁶⁰

This circuitous process is abolished by section 3-419, which allows the payee or other true owner to directly sue the drawee bank or any other person who "pays" such an instrument.⁶¹ The drawee can

54. 255 So. 2d 816 (La. App. 2d Cir. 1971).

55. 159 La. 752, 106 So. 292 (1925).

56. The issuance of the instrument operates as conditional payment only. If the instrument is stolen from the payee, the underlying obligation still exists because the payee "has never in reality been paid." *Smith v. Louisiana Bank & Trust Co.*, 255 So. 2d 816, 819 (La. App. 2d Cir. 1971).

57. Cf. LA. R.S. 10:4-401 (Supp. 1974).

58. LA. R.S. 7:65, 7:66 (1950) (repealed 1974).

59. *Fidelity Nat'l Bank v. Vucci*, 224 La. 124, 130, 68 So. 2d 781, 783 (1953).

60. Since under the *Vucci* case the depositary bank could not be a holder in due course of an item bearing a forged indorsement (LA. R.S. 7:65, 7:66 (1950) (repealed 1974)), its right to recover must be based on some theory other than breach of warranty, e.g., recovery of money paid under mistake of fact. LA. CIV. CODE art. 2301, discussed in *Smith v. Louisiana Bank & Trust Co.*, 255 So. 2d 816 (La. App. 2d Cir. 1971).

61. While the Commercial Laws now allow a direct action, it is still possible to use the *Smith* approach based on the underlying obligation. In fact, the Commercial Laws strengthen the validity of the approach since the completion of the circuit of action that places the loss on the party who dealt with the thief no longer depends on the express warranty usually given but not required. This approach may appeal in some cases where the drawer is in the same locality as the true owner and the drawee

then recover on the basis of the presentment warranties of section 3-417(1) or 4-207(1). Under the Commercial Laws as interpreted,⁶² a drawer may not sue a depository or other collecting bank, however, as such banks are not in the position to assert defenses of negligence as is the drawee.⁶³ Section 3-419(3) also purports to shield collecting and depository banks from suit by the true owner except to the extent that such banks have proceeds remaining in their hands. In *Cooper v. Union Bank*,⁶⁴ the California supreme court nonetheless side-stepped the apparent protection of 3-419(3) by reasoning that when the true owner sues the collecting bank he ratifies the collection of proceeds from the payor bank. Then, under general banking theory, the funds paid to the unauthorized party by the collecting bank are its own, and it holds the proceeds of the instrument for the benefit of the true owner; therefore, the bank still has the proceeds on hand and is not shielded by 3-419(3). Applying the same rationale to a depository bank takes the final step of allowing the true owner to sue directly the party most likely to be held ultimately liable, a result which has much to commend it.⁶⁵

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or depository bank is in another forum some distance away. Also, since the rule of *Price v. Neal* does not apply in the case of a forged necessary indorsement (see text at note 53 *supra*), the *Smith* approach may still validly be used by the drawee under the new law.

62. *Stone & Webster Eng'r Corp. v. First Nat'l Bank & Trust Co.*, 345 Mass. 1, 184 N.E.2d 358 (1962). *But see Allied Concord Fin. Corp. v. Bank of America Nat'l Trust & Savings Ass'n*, 80 Cal. Rptr. 622, 275 Cal. App. 2d 1 (2d Dist. 1969).

63. The drawee bank is in a better position to discover and prove the negligence of the drawer because it can prove when cancelled checks were sent to the drawer in a case where the drawer's alleged negligence is failure to examine and report the forgery. Moreover, the drawee, having dealt with its customer and being in the same community, can better discover any faulty business practices of the drawer.

64. 107 Cal. Rptr. 1, 507 P.2d 609 (1973).

65. *See J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE, § 15-4 (1972).*