

PREFACE

THE FIRST EDITION of *Brady on Bank Checks* was published in 1915; in 1926, the Second Edition was published. Supplements to the Second Edition were issued in 1929 and 1933. The two editions and their supplements were prepared by John Edson Brady, who was a leading authority on the law of banking and negotiable instruments.

With the advent of the Uniform Commercial Code (UCC) and its enactment in some states by 1962, a Third Edition of *Brady on Bank Checks* was prepared by Professor Henry J. Bailey. Further editions were published in 1969, 1979, also prepared by Professor Bailey. The Sixth Edition, published in 1987, and the Seventh Edition, published in 1992, were the joint work of Professor Bailey and Professor Richard B. Hagedorn, of the College of Law of Willamette University.

The Revised Edition, also the work of Professors Bailey and Hagedorn, covers the many developments in the law of bank checks that have occurred since the Seventh Edition was published. In 1990, revised Articles 3 and 4 were approved by the UCC sponsoring organizations, The American Law Institute and the National Conference of Commissioners of Uniform State Laws, for enactment by the states. Forty-nine states have enacted revised Article 3, covering negotiable instruments (including checks), and revised Article 4, covering bank deposits and the collection of checks and other instruments for the payment of money. Only New York retains the 1962 versions.

The Revised Edition examines variations in the enactments of revised Articles 3 and 4 by various states. It discusses cases that have arisen under revised Articles 3 and 4 and a number of cases that arose under former Articles 3 and 4 that preceded the effective dates of the revised Articles in the various states. It also discusses cases that continue to be decided under the 1962 versions of Articles 3 and 4, particularly in New York.

UCC Article 4A, on transfer of funds, including wire transfers and similar transfers, has been enacted in all states and the District of Columbia. Such transfers have some aspects similar to transfers of checks for collection through banks. Article 4A comprises a relatively new set of provisions with no earlier UCC counterpart. This Edition includes extensive discussion of Article 4A and cases that have arisen under the Article.

Check 21 has had a significant impact on the law of bank checks, and the Revised Edition has been updated to include extensive discussion of the act. The Revised Edition also discusses the requirement at the federal level that banks receiving checks for deposit that are drawn on other banks make the proceeds of such deposits available to depositing customers within stated periods after deposit. Such requirements, designed to speed up the bank deposit and collection system, are set forth in a federal enactment known as the Expedited Funds Availability Act and in a regulation of the Board of Governors of the Federal Reserve System known as Federal Reserve Regulation CC. The Federal Reserve Regulation deals not only with required periods of funds availability to depositors of checks, but also with requirements intended to speed up the collection of checks through the banking system and the prompt return of checks that are not paid by the banks on which they are drawn.

A problem that has intensified since publication of the Seventh Edition is bank liability where checks of a business organization or a trust or estate are handled by banks in such a manner as to allow the diversion of the proceeds for the personal benefit of employees, agents, or fiduciaries of such a business organization, trust, or estate. Losses arising from bank handling of checks with forged signatures or forged indorsements have also been on the rise. Such checks are often used as a means of embezzling funds,

generating a number of newer and often significant court decisions. These developments are fully covered in the Revised Edition of *Brady on Bank Checks*.

Since the passing of Professor Bailey in 2006, Professor Hagedorn continues as lead author of *Brady on Bank Checks*. Professor Hagedorn gratefully acknowledges the valuable assistance of the Willamette University College of Law in the preparation of this work. In particular, he is grateful for the countless hours spent by Kathleen E. Marbut and Andrea Whalen in preparing the text. Thanks also go to the editorial staff of A.S. Pratt & Sons for its guidance in shaping this work, particularly to lead editor, Catherine Dillon.

Salem, Oregon

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A Note on Citations and Abbreviations

This work discusses the law of checks as set forth in UCC Articles 3 and 4, as originally approved by the sponsoring organizations in 1962 for enactment by the states. There is additional discussion of the revised UCC Articles 3 and 4, approved by the sponsoring organizations in 1990 for enactment in place of the 1962 versions of Articles 3 and 4. For introductory discussion of the 1990 UCC provisions, see ¶ 1.07.

References throughout this volume are to the earlier version of Articles 3 and 4, described as the “1962 UCC,” or to a particular section, described as “UCC _____ (1962).” References to the replacement provisions of Articles 3 and 4 are to the “1990 UCC” or to a particular section, described as “UCC _____ (1990).” References to sections of UCC articles other than Article 3 or Article 4 are without designation, as the 1990 UCC provisions have no effect on other articles, except for amendment to several sections in Article 1, which are described where they are relevant to the discussion.

Court decisions to date are to both the 1990 UCC Articles 3 and 4 and their predecessors. In the work, the discussion of each case clearly indicates whether the case arose under the 1990 articles or their predecessors.

Reported court decisions cited in this work are set forth by the names of the litigants (e.g., *Smith v. Bank of Anywhere*), by the volume and reporter of the National Reporter System, by the state official report, where available, and by date. Cases in the federal courts are also cited according to the state from which the case arose, because federal cases relating to commercial paper are almost always governed by state law, not by federal law. In many instances, cases under the UCC are also cited by the report in the UCC Reporting Service (cited as “UCC Rep.” or “UCC Rep. 2d”).

References to the former Uniform Negotiable Instruments Act are abbreviated “NIL.”

The work includes a Table of Cases, a Table of UCC Sections, and a subject Index.

