

5-1-1992

I Want to Know What Bearer Paper Is and I Want to Meet a Holder in Due Course: Reflections on Instruction in UCC Articles Three and Four

Marianne M. Jennings

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Commercial Law Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Marianne M. Jennings, *I Want to Know What Bearer Paper Is and I Want to Meet a Holder in Due Course: Reflections on Instruction in UCC Articles Three and Four*, 1992 BYU L. Rev. 385 (1992).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1992/iss2/9>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

I Want to Know What Bearer Paper Is and I Want to Meet a Holder in Due Course: Reflections on Instruction in UCC Articles Three and Four

Marianne M. Jennings*

We all remember Articles 3 and 4, the infamous commercial paper¹ sections of the UCC,² from law school. This portion of law school is to law students what “Flatliners” is to medical students—a point of near death brought on by the lack of brain waves or, in law students’ case, confused brain waves. It is followed by hauntings—in this case being chased by forgers and holders in due course.

Students have a tough time with negotiable instruments.³ It may be that the subject matter is confusing.⁴ We know it isn’t because students don’t use negotiable instruments—they all write checks.⁵ It just may be that we, as professors, haven’t

* Professor, College of Business, Arizona State University

1. No one knows why this term arose. It could be an attempt to avoid confusion because zoning lawyers helped draft Article 3 and they were looking to distinguish commercial paper from residential and industrial paper.

2. The Uniform Commercial Code—as if there is a soul reading this who wouldn’t know that, but then again, the *Bluebook is the Bluebook*.

3. Another term for commercial paper, as opposed to non-negotiable instruments or residential or industrial instruments.

4. In fact, courts take judicial notice of how confusing it is. Indeed some of the court decisions on Articles 3 and 4, besides being confusing, are just plain wrong. *See, e.g., State ex rel. Hawkins-Hawkins Co. v. Travelers Indem. Co.*, 442 P.2d 612 (Or. 1968) (the lawyers forgot to bring up the UCC). *See also Stone & Webster Eng’g Corp. v. First Nat’l Bank & Trust Co.*, 184 N.E. 2d 358 (Mass. 1962) (in which the court misspelled endorsement as indorsement). One can hardly fault the students. It appears that many members of the House of Representatives missed the lectures on overdrafts, dishonor, and adding and subtracting. In fact, if you’re expecting any of your students to run for public office, you should include a check-kiting dos-and-don’ts lecture. *But see infra* note 41.

5. Most of them are postdated checks or of the rubber variety, a.k.a. Congressional checks; no balances. Hence, the intense interest in liability discussions with questions such as, “How many times can I bounce a check for my rent without being evicted?” Students always have landlord-tenant questions for

brought the material to life.⁶ For example, have you ever taken the time to point out a real holder in due course to your students or had one in as a guest lecturer?⁷ Professors teaching Articles 3 and 4 have been unjustifiably given the labels “boring,” “useless,” and “confusing.”⁸ The truth is this material is pretty lively stuff—from the cases to the list of things you can offer students to use to drive bank tellers crazy.⁹ Hopefully, this article will give you some ideas for making the material come to life,¹⁰ or at least perplex humorless CPAs in your classes.¹¹

you. Whether you are teaching the Safe Harbor Rule under Section II of the 1933 Act (it's somewhere around 15 U.S.C. § 77—and you don't need the date on the spine of the book; the Act has been the same since 1933) or the antitrust implications of suggested retail prices, students will work in a landlord-tenant example.

6. If Elvis can come back, why can't the imposter rule be made more lively?

7. You should be certain that the students have been exposed to bona fide purchasers (BFPs) before you introduce holders in due course (HDCs). BFPs are those with a pure heart and an empty head. Folks who will not qualify as BFPs include Jim and Tammy Bakker (Tammy only meets part two of the test), Charles Keating, Arizona Governors, Michael Milkin, anyone who has ever been employed at Salomon Brothers, and Geraldo. Phil Donahue would have qualified as a BFP until the fabricated nun story. A little-known comment to section 1-201(19) (the definition of “good-faith”) provides that fabricated nun stories prohibit both BFP and HDC standing. Even the shelter provision of § 3-201 will not afford protection for folks who tell fake stories about nuns and have other nasty “habits.”

8. No data was immediately available to determine whether these terms are describing us as instructors generically or, more specifically, us when we delve into Articles 3 and 4. If these adjectives describe you in general, then you should stop here and spend your time reading Dale Carnegie or watching perky Mary Hart in action. You might want to approach the latter assignment from a research angle—will television shows need disclaimers when hosts' voices induce seizures and assuming *arguendo* they are needed, are they valid?

9. See *infra* notes 14-19, 29, 36, 44, 46-49, and 65 and accompanying text.

10. It's also possible that this article will give you grave doubts about the author's sanity. The truth is I went around the bend the first time I had to explain why you need “Pay to the order of” on the front of an instrument but you can write “Pay to” on the back of an instrument. Explanations I've tried include: “There's less space on the back.” “No one looks at the back.” “If they're signing checks over, it will bounce anyway.” Students still don't get it. Thankfully, the proposed revised Article 3, in a move that is certain to shock the financial world in the sense that it didn't even know anything had to be changed, now allows you to use “Pay to” or anything else you want on the front of a check. I was thinking “Hey you” would be a nice change of pace. This language change was made in revised Article 3 when the American Law Institute heard testimony from tellers and check processors that went something like this, “Now what is supposed to be on the front of the check?” The testimony also included tearful confessions from check processors that they had not looked at the front or back of any check since 1948.

11. They're humorless since they have to understand Articles 3 and 4 warranty liability because all the lawyers never did get this stuff in law school. CPAs are

I. NEGOTIABLE INSTRUMENTS—WHO WOULD HAVE GUESSED THEY HAVE TO BE IN WRITING?

I always enjoy teaching the six requirements of negotiability because they start out with a requirement that is so difficult to grasp—they have to be in writing.¹² I can envision an interesting world if we had oral checks —“Didn’t you get my payment? I left it on your answering machine.”¹³

Here you can slip in the first rule to drive tellers crazy.¹⁴ Articles 3 and 4 do not require checks to be written on any particular form.¹⁵ Banks have you sign an agreement that requires you to use their nifty forms. However, students take great pleasure in hearing of cases and urban legends alike in which checks have been written on egg shells,¹⁶ tractor fenders,¹⁷ a tamale and a watermelon.¹⁸ Further, students

left holding the bag (so to speak) in determining who loses when there is a forger, an imposter, a thief, a bouncer and a host of other knaves who occupy Articles 3 and 4.

12. Actually, there is no section that states, “These things have to be in writing.” Section 3-104 lists the requirements for a writing to be negotiable, ergo, we assume oral statements cannot be negotiable.

13. This would replace one of the great lies of our time, namely, “The check is in the mail.” Other great lies include, “My divorce is final next week,” and “I was awarded tenure on the basis of my teaching.”

14. Be sure to suggest to the students that they use their new-found negotiable instruments skills on a teller-trainee at 5:30 p.m. on a Friday. This makes for delightful weekend conversation for students and tellers alike. For specific suggestions, see Figure 1.

15. See § 3-104. I just explained that in footnote 12. If I wanted proper *Bluebook* form it would be, See *supra* note 12. Some editors are humorless as well.

16. One wonders about the motivation and personality of those souls who thought of this as an outlet for their financial scrivener talents. Nonetheless, this egg shell case occurred in Phoenix. Bookkeeper Pam Winters accepted the egg shell for Valley Bank in 1979 and has spent her years since then figuring out how to file the thing. Sorry Harvard, I don’t have a cite for this. I read it in a newsletter and I still have the clipping. If anybody reading this is so uptight that you feel like you just have to see it you can send \$15.00 and a self-addressed, stamped envelope to me in care of this law review and I’ll send you a copy of the article.

17. Most students are more surprised to learn that tractors have fenders than that you can write checks on them. This is true even of the non-Nebraska students.

18. The tellers at the Indianapolis bank that accepted the tamale and watermelon took pictures of the representatives from several of the basic food groups and then ate them along with the payees. That is, the tellers and the payees ate the tamale and the watermelon. Tellers can be brutal, but they did not eat either payee.

Also, the IRS is the frequent payee of negotiable shirts. See DOUGLAS J. WHALEY, *PROBLEMS AND MATERIALS ON NEGOTIABLE INSTRUMENTS* (2d ed. 1981).

appear eager to try a few of these financial art forms on tellers. Non-obscene suggestions include Dorito bags, Chivas bottles, Bud Light caps and McLean wrappers.¹⁹

Students seem to easily grasp the concept that negotiable instruments require a signature. But they seem possessed with concern about someone forging their signatures.²⁰ They enjoy learning that their banks are liable for cashing forged checks.²¹ Dreams turn to dust when they learn their burden of proof in forgery cases.²²

Fortunately, forgery is not the only interesting facet of negotiable instrument signatures. There's always a lively discussion when you point out that an individual who signs for an organization, without indicating the principal and his/her capacity, is personally liable for the amount of the instrument.²³ There are visions of having to pay for every keg the fraternity has downed this year. A colorful case to share with them is the one where the fellow bought 325,000 hot dog buns for the Pope's visit to Des Moines, Iowa.²⁴ Only 300 hot dogs were sold.²⁵ Who was liable for the \$28,640 of buns when

19. This is not to suggest that any of these companies incur liability as accommodation parties for the use of their products and product labels in the heavy financial world of college students. See § 3-415 for a decent definition of accommodation party.

20. This is difficult to understand given the fact that most student checking accounts have only enough money in them to cover the returned check fees on the four checks they wrote last week that will bounce but serve nonetheless to keep landlords, mechanics, and grocers at bay.

21. You can almost hear the little hamster turning the wheel as they begin to think of ways to yell "Forgery" in a room crowded with creditors. They have not yet studied the Supreme Court decisions on First Amendment rights and the accompanying "Yelling-Fire-in-Crowded-Movie-Theater" theory.

22. They seem disappointed to learn that they have to review their checking account statements to find forgeries. They're crushed when you tell them about the 14-day time limit. See § 4-406.

23. See § 3-403. Why should we quote it when it's in the back of every business law book known to man or woman (or unknown to man (in the anthropomorphic sense) since no one uses the statutes that take up 50 pages as an appendix in every text)? Revised Article 3 makes some changes here. The signer (i.e. maker; drawer) can now prove he/whe was an agent. Pictures of toga-clad fellow students with glazed-over eyes should help establish that the signer did not personally drink the eight kegs he wrote the check for ("for which he wrote the check" if prepositional endings bother you).

24. Several points of clarification are necessary. No, the check was not written on a tractor fender. *But see supra* note 17. Also, Des Moines wouldn't seem like a high priority for the Vatican.

25. The case is *Colonial Baking Co. v. Dowie*, 330 N.W.2d 279 (Iowa 1983). One is not told whether papal crowds simply aren't in the mood for hot dogs or Dowie just made a bad hot dog. At any rate, sales projections were clearly off and

only Frederick J. Dowie's signature appeared on the check?²⁶ Dowie had to pay for the buns.²⁷

II. I THOUGHT POSTDATED CHECKS WERE ILLEGAL

Students have a great deal of difficulty with checks and dates.²⁸ They understand the six-month rule for stale checks²⁹ but thirty days is meaningless to them as a liability time limit.³⁰ This is a good time to point out some of those urban legends about old checks. One of my favorites is the \$187 check from Ramada to an advertising firm that was lost for eleven years.³¹ Ramada told them to cash it.³² As long as

you should refer students to the marketeers for some answers.

26. This is a good place to point out to the students the concept of corporate structure and alter ego. They enjoy integration of law topics.

27. This is what happens when you use those temporary checks from the bank that have no name or address on the top. If someone is foolish enough to take them (*see supra* notes 20-22 and accompanying text on forgeries), you'll end up paying cash anyway. Again, Revised Article 3 offers some help for agents with new bank accounts. You get to explain, "I don't care if you are a holder in due course, I just work here."

28. More accurately stated, they have problems with dating checks, not going on dates. Even more accurately stated, they're not going out with checks, they just seem to be creative in deciding the appropriate calendar date and year to put on their checks.

29. The six-month rule (section 4-404 for those keeping score) does not require a bank to pay a check (except certified checks but those are more rare than holders in due course. Personally, I've never seen one. Further, this is the second Jennings rule for driving tellers crazy. Ask one to certify a check for you. Whether or not the teller knows what it is, he or she will simply proceed to issue you a cashier's check) that is presented more than six months after its date. Unless, of course, the bank pays it in good faith. Frankly speaking and given the events surrounding banks and the FDIC over the last two years, it is difficult for me to imagine any good faith floating anywhere near these receiverships (unless of course, management has changed).

30. For those of you who haven't read sections 3-502 and 3-503, the 30-day time limit for attaching liability is not really significant unless the drawee bank becomes insolvent during the delay beyond the 30 days. This section was only relevant during the Reagan administration and then primarily in the "Keating 5" states (i.e., Ohio, Arizona, California and just about all the other states). However, Alaska is probably the best off because it looks like part of Canada to me and Canadian banks seem to be okay presently. I'll get back to you when Quebec defects.

31. *Ramada Honors 11-year-old check*, ARIZONA BUSINESS GAZETTE, June 10, 1985, at A1. (There's no joke here. It's a real cite!) It was the check that was lost, not the advertising firm. I'm just not that good at rephrasing. *See, e.g., supra* note 18.

32. Ramada said they didn't catch the problem earlier because it was in "an accounting twilight zone." S. S. Coe Co., the advertising firm and payee, said they didn't catch it sooner because they never clean their offices and the check was found under a file cabinet. It's probably safe to conclude it was dirty money.

you're delving into dates, you might as well take the time to point out to the students that they're generally studying the 1972 version of the UCC. Since most students don't remember Nixon and have no idea what happened on November 22, 1963,³³ you might as well tell them you are studying the Magna Carta.³⁴

The truth of the matter is that students rarely have old check problems. In fact, in most college towns, bank tellers have permanent Flair pen ink stains on their hands from the daily work of cashing student checks. These checks are presented for payment while the ink is still drying and the cap is still off the maker's Flair. The cash flow concept for students is more like the cash flash flood; it comes and goes very rapidly, unexpectedly and with a great deal of damage as it goes. Student's problems with dates³⁵ and checks is that the checks are Trekkie in nature—written for the future. Postdating checks is not only another Jennings' rule for irritating tellers, but also holds as much fascination for students as landlord-tenant disputes.³⁶ Students write a lot of postdated checks but—here's the peculiar part—they do so thinking it's illegal.³⁷ In many cases, tellers have told them so.³⁸ Be sure to point out that the illegal part of postdating is when the check is written with no funds presently in the account or planned for the account until the Pell grant for the

However, BCCI was not involved.

33. This is the date President Kennedy was shot. You might need to explain to the students that there have been three Kennedys, but not one of them has qualified as a holder in due course. If you don't explain that there have been three Kennedys, they'll assume that the Ted Kennedy presidency slipped by them, that he was shot, and that he is now wandering the earth like Elvis. The authority for the date comes from Oliver Stone. Harvard will no longer accept FBI files as original authority for proper Bluebook form.

34. Unless someone mentioned the Magna Carta in their introductory course, students won't know what it is either.

35. Go back to footnote 28 for the distinction between calendar dates and social dates or *see supra* note 28.

36. *See supra* note 5, you know, where I talked about how students see every law and every issue as relevant to their current landlord-tenant dispute.

37. Read them § 3-114, especially the part where it says postdating does not affect negotiability.

38. This is like asking Madonna to opine on how the new independent Soviet Republics will fare. But the teller is a figure of authority to most students because tellers are the ones who say, "I can't cash this check because you have no money in your account." To which students reply, "But I postdated the check; I *will* have money." This scenario was eliminated from the explanatory comments to § 3-114 in 1972.

following year comes through.³⁹

III. WHEN ARE YOU PEOPLE GOING TO LEARN HOW TO SPELL INDORSEMENT?

Indorsement always presents significant difficulties for students.⁴⁰ The first difficulty is that they think we spell indorsement wrong.⁴¹ This is a good time to talk about dictionaries and preferred spellings.⁴²

For students to understand indorsements, they need to understand the difference between bearer paper⁴³ and order paper. Even though in their entire life to date (in mine as well), students have never seen a check made payable to "Bearer,"⁴⁴ they need to know that bearer instruments are negotiated simply by delivery.⁴⁵ This is true even though no teller on this

39. This is all part of the "check-is-in-the-mail" stratagem. The new revisions to Article 3 provide that banks won't have to honor postdates on the checks. Banks can now just ship the postdated checks right through. Students will be worried about this until you explain that banks were pretty much doing this anyway and just hoping no one would yelp about it. Even if someone did yelp, they just sent out a teller with the "postdated-checks-are-illegal" speech.

40. There is no implication that this concept is the only source of significant difficulties for students. The lack of two flavors of yogurt at the student union often seems insurmountable to them.

41. We do spell it wrong and we have no intention of changing. The new Articles 3 and 4 continue the "i" vs. "e" tradition. If Random House can invent "herstory," why should the world dictate that lawyers spell indorsement correctly?

42. This may also be a good time to explain where they can find a dictionary. After all, these students are products of the pre-Bush reforms education system.

43. Although we *do* spell this correctly, it strikes me as a poor name. All I can think of is the wallpaper in the delivery room of the hospital where I was having my children and several people shouting, "Bear down."

44. In fact, here is another rule for irritating tellers. Try to cash a check that reads, "Pay to the order of Bearer." The teller will make a face and say, "Could I see some ID, Mrs. Bearer?" Other tellers will say, "Please write in the word 'cash.'"

45. This is a good place to tell them about *Scherer v. Hyland*, 380 A.2d 698 (N.J. 1977). In that case, Catherine Wagner received a check for \$17,400 in settlement for injuries (facial wounds and broken hips) that she had suffered in a car accident. She indorsed the check in blank (making it bearer paper). She then put it on the kitchen table in the apartment she had shared with her lover, Robert Scherer, for fifteen years. Scherer had rented the apartment in his name.

Wagner then wrote two suicide notes to Scherer. One asked his forgiveness for "taking the easy way out." Definitionally speaking, "suicide" and "easy way" are not two terms I equate. The other left everything she owned to him including "the check," which she specified in the note. She left the apartment, locked the door, went to the roof of the building and jumped to her death.

When the police arrived, they took possession of the check. Hyland (one of Wagner's relatives) was appointed administrator of Wagner's estate and claimed the check was part of the estate. Scherer claimed the check was bearer paper, was delivered, and was his.

planet will accept a check made payable to "bearer" or to "cash" unless it is also signed on the back.⁴⁶

There are some other nifty things about indorsements that are good teller-irritants. Tell your students to indorse their checks with the qualified indorsement "without recourse" above their signatures.⁴⁷ This will evoke the following response from the teller: "I don't know what this is."⁴⁸ Another indorsement-related bank-lobby crowd-pleaser is to insist that a check made payable to you and being deposited in your account does not require your signature.⁴⁹ Section 4-205 covers this little bank break.⁵⁰

The court found for the paramour. The moral of the story is that successful personal injury claims do not make us happy. Refer this to the ethics people and future lawyers who plan to specialize in personal injury law.

46. Yet another rule for confusing tellers. Just try explaining that it's bearer paper and a signature is not necessary. This brings home to the student that banks don't really care what Articles 3 and 4 say. See *supra* notes 15 and 38 and accompanying text for further proof of the "We're-banks-we-don't-have-to-care-theory." This theory is closely related to the "I'm-the-author-I-don't-have-to-care-theory" demonstrated with regard to the *Bluebook supra* all over the place and *infra* in a few places too. (No apologies to the arrogant Harvard editors who think the rest of the legal community would be unable to communicate effectively without their gracious assistance. Eds.)

47. Make sure your students know they still have to fit it all in that tiny little space at the top on the back of the check because if they don't, the bank can say, "We don't want your check." Of course, the bank can say that for a lot of other reasons as well. In fact, the bank tellers can laugh in your face. But if you go outside the "endorsement" space, they are allowed to hit you on the knuckles with a roll of quarters. Revised Article 3 also makes some changes on the effect of the "without recourse" indorsement. However, since banks have not looked at a check since 1948, signing "without recourse" has had no effect and the changes pretty much say that banks can continue doing this but now they can be in agreement with Article 3. These drafters behave toward banks the way I behave with my children when we're four hours into a cross-country flight. "Just tell me what you want me to do to keep you quiet and out of the laps of the first-class passengers and I'll do it."

48. There's a good chance that by the time your students get to the bank, they will have forgotten what it is too. Instruct them to say simply, "It makes it bearer paper." The teller might then be willing to proceed but again will ask, "Could I see some ID, Mrs. Bearer?"

49. This is the bank's way of refusing to take money. Signatures are to bankers what cocaine is to Hollywood producers. They have to have them whether they need them or not. It begins with initials on memos and progresses until they are scoring officers' signatures as guarantors on corporate notes.

50. Of course, income tax refund checks require indorsements. It's just been so long since I got a refund that I forgot what they look like and that they require indorsement. The federal government apparently does not subscribe to § 4-205. But this falls under the "We're-the-federal-government-we-don't-have-to-care" principle of law.

IV. HOW COME THIEVES ARE NEVER LIABLE UNDER ARTICLE III? HOW COME THIEVES AREN'T MENTIONED SPECIFICALLY? HOW DO THIEVES CASH CHECKS WITHOUT ID?

Under Article 3, there are discussions about stolen instruments.⁵¹ However, thieves are not held liable.⁵² The folks who wrote the law came to the pretty safe conclusion that those who forge (i.e. steal, i.e. commit crimes) don't wait around for the fun and action of collection.⁵³

However, liability for stolen instruments varies according to when the instrument was stolen and which signature was forged. For example, if a thief steals your checkbook and writes checks, your bank will be liable for the forgeries.⁵⁴ But, if the

51. See § 3-804. This section just says you can get another check if you lose the first one. If the check was stolen, you can get another one and a stop payment order is used to prevent the thief from cashing the check. This is where I get lost. My friendly K-Mart will not take a check for \$1.99 for the blue light special of 1000 butter cookies from Holland without six pieces of ID and a second mortgage on my home. Yet, there are three sections (3-405, 3-417 and 3-804) that cover what happens when a thief cashes a check. Who are the folks cashing these checks for thieves? And why aren't they suspicious when the ID has a different picture and name? They're probably endorsing them "without recourse" and the tellers are impressed and cash the things. Article 3 reforms have changed payees' rights when instruments are stolen. There's talk of comparative negligence; i.e. the old "We'll-See-Who-Was-More-Stupid-Theory" of check thievery: The bank for cashing a check for someone carrying a chain saw or you for leaving the check near a pay phone at a Greyhound bus depot.

I have concluded that I am not going to teach the changes on thieves in revised Article 3. It's taken me 15 years and many of my interpersonal relationships to understand the existing thievery sections. Further, I intend to lobby extensively along with a group of convicted forgers to prevent the adoption of new Article 3 in my state (Arizona—the one where governors are not holders in due course and are proud of it). I don't want to speak too soon and risk a political *faux pas*, but I have had quiet talks with the state's holders in due course and it looks as if we will have their support in our opposition campaign.

52. This protection for thieves has been particularly helpful for former officers and directors of RTC-possessed savings and loans.

53. Contrary to what Perry Mason would have us believe, these folks don't stand up in the courtroom and say, "You're right. Let me pay up." I think the lack of funds was why they forged in the first place. I have no support for this statement; it is a visceral feeling.

54. See § 4-406. This section requires customers to "examine" bank statements within 14 days to find these nasty forgers. Accountants always lose out here because, as we all know, accountants don't balance their own checkbooks, lawyers don't have their own wills, and doctors walk around sick. It is important to note that you will have to establish the forgery. See *supra* notes 21-22. Again, there are those proposed anti-thief changes in Article 3. As I see it, these may actually be pro-thief changes. If the bank is not always liable, what incentive do they have for checking the ID of folks attempting to cash checks while wearing hockey masks?

thief steals a check made out to you and forges your indorsement,⁵⁵ then the moron who first took and cashed the check will be liable.⁵⁶ This is because banks can't be expected to check indorsements.⁵⁷ Either way the thief walks off and someone else pays for the damage.⁵⁸

Students never get this whole section because they can't even cash checks *with* ID, so it's tough for them to imagine a thief having much success.

V. ARTICLE IV—DOES THE BANK EVER LOSE AND HOW COME CHECK GUARANTEE CARDS AREN'T COVERED?

David Epstein used to say the fundamental rule of law on Bank Deposits & Collections (Article 4) is "Bank Wins."⁵⁹ Banks can decide if they want to take a check and, if they do, and it turns out to be no good,⁶⁰ they can take it out of your account anyway.⁶¹ Don't spend a lot of time discussing whether a bank gives value to be a holder in due course. Banks don't need to be holders in due course because they can change their minds.

Finally we have the check guarantee cards. Mentioned nowhere in Articles 3 or 4, these beasts change the right to dishonor.⁶² They also change stop payment rights. Students are always curious about stop payment orders.⁶³ The Code says they can be oral.⁶⁴ Here's another cute thing for students to try on tellers—tell students to try and get an oral stop

55. With or without recourse.

56. This is because the moron failed to check ID or failed to see the ID had a different name and picture. *See supra* note 51.

57. For purposes of discussion, ignore my earlier hoopla (or, is it *supra* hoopla?) about banks and their touchiness about indorsements. *See* notes 46-49 and accompanying text. Also, recall note 10 *supra* for data on the last time any human ever really looked at the back of a check.

58. *See also* the savings & loan crisis.

59. He only said this out loud in my bar review course so I have no cite except that he said it at 8:10 p.m. on July 1, 1977 in the Great Hall at the Arizona State University Law School. Or does the date go in parentheses?

60. In lay terms, "It bounces." In Code terms, "It is dishonored upon presentment."

61. *See* § 4-212. Banks are very much like my children. They pretty much do what they want and as much as they can until I speak up.

62. Section 4-401 is the bank's section on charging the account.

63. They have put in a few stop payment orders since you explained to them that postdating checks is illegal if there's no money.

64. *See* § 4-403. This is also a good time to break the news that they need to know to whom they wrote the check and for how much. Record keeping is often not a high priority among students.

payment order.⁶⁵ When you can't fully explain the different treatment precipitated by guarantee cards, students will wonder why you teach in a vacuum and you'll have to rely on the "we're slow to change" speech.⁶⁶

VI. CONCLUSIONS AND RECOMMENDATIONS

Teaching Articles 3 and 4 of the UCC is tough. Don't bring up posting.⁶⁷ Tell them no one steals commercial paper anymore.⁶⁸ Avoid talking about check guarantee cards and stop payment orders. Take two Tylenol⁶⁹ and don't ever call me.⁷⁰

65. Over the phone, the guaranteed response: "You need to come in and do that." The teller mix-up rules are summarized in Figure 1.

66. See *supra* notes 41-42 on indorsement spelling.

67. There's not a soul walking the earth who understands this. See § 4-301 for loss of coherent thought.

68. It's too hard to hot wire.

69. Aspirin is bad for your stomach. So are Articles 3 and 4. But, if you have high blood pressure, take the aspirin and don't teach Articles 3 and 4. Find a new line of work—sorting spools of thread. Watch out for retired holders in due course who have taken that on as weekend work.

70. My line will be busy. I've been trying to place an oral stop payment order for 14 years.

FIGURE 1
JENNINGS' LIST OF ACTIONS FOR TELLER IRRITATION

ACTION TO CONFUSE TELLER	POSSIBLE TELLER RESPONSE
1. Take in a check written on the screen of an overhead projector.	a. "Could I see some ID?"* b. "Been writing checks long?" c. "How have you been, Mr. Quayle?"
2. Postdate a check.	a. "Could I see some ID?"* b. "You know this is illegal." c. "This isn't BCCI, buddy." d. "Do we look like an S&L?"
3. Write a check payable to the order of bearer.	a. "Could I see some ID, Mr. Bearer?"* b. "Why didn't they put your first name on here?" c. "Is your first name Smokey?" d. "This looks illegal."
4. Indorse your checks "without recourse."	a. "Could I see some ID, Mr. Recourse?"* b. "Don't get fresh with me." c. "'Without' is an odd first name." d. "Why don't you go to another window?"
5. Refuse to indorse a check when you are just depositing it in your account.	a. "If you won't indorse it, your ID is no good." b. "It would be one thing if you had a check written on an overhead projector." c. "Why don't you go to another bank?"
6. Try to place an oral stop payment order.	a. "How can I see your ID over the phone?" b. "You know this is illegal." c. "Well, Mr. Bearer, next time don't use a check guarantee card."

* Appears to be a universal and rote response.