

1986

# Mountain States Telephone v. Terry J. Stephenson and Jill M. Payne : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

James F. Housley; Pro Bono Attorney for Defendant and Appellant.

Floyd A. Jensen; Attorney for Respondent.

---

## Recommended Citation

Brief of Appellant, *Mountain States v. Stephenson and Payne*, No. 860268.00 (Utah Supreme Court, 1986).  
[https://digitalcommons.law.byu.edu/byu\\_sc1/1157](https://digitalcommons.law.byu.edu/byu_sc1/1157)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE SUPREME COURT OF THE STATE OF UTAH

---

89  
DOCKET # 860268  
MOUNTAIN STATES TELEPHONE  
AND TELEGRAPH COMPANY,

Plaintiff and  
Respondent

v.

TERRY J. STEPHENSON and  
JILL M. PAYNE,  
Defendants.

JILL M. PAYNE, Defendant &  
Appellant.

:

:

:

:

:

:

:

Case No. 860268

---

BRIEF OF APPELLANT

Appeal from an Order granting plaintiff's Motion for Judgment on the Pleadings, from the Judgment entered pursuant thereto, and from an Order Denying Defendant's Motions (Alternative Motions for Relief From Order, Amendment of Judgment, New Trial, Judgment N.O.V., and Findings of Fact and Conclusions of Law) in a civil action in the Third Judicial District Court in and for Salt Lake County, State of Utah, Honorable Scott Daniels, Judge, presiding.

---

James F. Housley (Bar #1545)  
Pro Bono Attorney for Defendant  
and Appellant, Jill M. Payne  
Volunteer Lawyers' Project  
Utah State Legal Services  
2001 S State St #3700  
Salt Lake City, Utah 84190-1200

FLOYD A. JENSEN  
Attorney for Respondent  
Mountain States Telephone &  
Telegraph Company  
250 Bell Plaza, Suite 1610  
P.O. Box 30960  
Salt Lake City, Utah 84125

IN THE SUPREME COURT OF THE STATE OF UTAH

---

MOUNTAIN STATES TELEPHONE	:	
AND	:	
TELEGRAPH COMPANY,	:	
Plaintiff and	:	
Respondent	:	
v.	:	
TERRY J. STEPHENSON and	:	Case No. 860268
JILL M. PAYNE,	:	
Defendants.	:	
JILL M. PAYNE, Defendant &	:	
Appellant.	:	

---

BRIEF OF APPELLANT

Appeal from an Order granting plaintiff's Motion for Judgment on the Pleadings, from the Judgment entered pursuant thereto, and from an Order Denying Defendant's Motions (Alternative Motions for Relief From Order, Amendment of Judgment, New Trial, Judgment N.O.V., and Findings of Fact and Conclusions of Law) in a civil action in the Third Judicial District Court in and for Salt Lake County, State of Utah, Honorable Scott Daniels, Judge, presiding.

---

James F. Housley (Bar #1545)  
Pro Bono Attorney for Defendant  
and Appellant, Jill M. Payne  
Volunteer Lawyers' Project  
Utah State Legal Services  
2001 S State St #S3700  
Salt Lake City, Utah 84190-1200

FLOYD A. JENSEN  
Attorney for Respondent  
Mountain States Telephone &  
Telegraph Company  
250 Bell Plaza, Suite 1610  
P.O. Box 30960  
Salt Lake City, Utah 84125

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES . . . . .	iii
JURISDICTION . . . . .	vi
STATEMENT OF THE ISSUES . . . . .	vii
CONSTITUTIONAL PROVISIONS AND STATUTES . . . . .	viii
STATEMENT OF THE CASE . . . . .	1
STATEMENT OF FACTS . . . . .	2
SUMMARY OF ARGUMENTS . . . . .	5
ARGUMENT . . . . .	6

<u>POINT I: SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, DOES NOT IMPOSE STRICT PERSONAL LIABILITY UPON A PERSON WHO AFFIXES AN AUTHORIZED SIGNATURE ON THE MAKER LINE OF A CHECK DRAWN ON THE CHECKING ACCOUNT OF A CORPORATION FOR THE PAYMENT OF CORPORATE OBLIGATIONS WHERE THE SIGNER IS A MERE EMPLOYEE OF THE CORPORATION WHO HAS NO INTEREST, BENEFICIAL OR OTHERWISE, IN THE FUNDS, ASSETS, PROFITS, OR BUSINESS OF THE CORPORATION AND WHERE SUCH SIGNATURE IS AFFIXED AT THE DIRECTION OF AN OFFICER OF THE CORPORATION . . . . .</u>	6
---	---

A: SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, SHOULD NOT BE CONSTRUED TO IMPOSE STRICT LIABILITY UPON A CORPORATE EMPLOYEE FOR THE AMOUNT OF A CORPORATE CHECK ISSUED BY THE CORPORATION IN PAYMENT OF A CORPORATE DEBT SIMPLY BECAUSE THE EMPLOYEE SIGNED THE CHECK UNDER THE DIRECTION OF A CORPORATE OFFICER . . . . .	10
--	----

B. CONSTRUCTION OF SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, TO IMPOSE STRICT LIABILITY UPON A CORPORATE EMPLOYEE SIGNING A CORPORATE CHECK IN A REPRESENTATIVE CAPACITY IS INCONSISTENT WITH SECTION 70A-3-403, UTAH CODE ANNOTATED 1953, AS AMENDED . . . . .	15
---	----

POINT II: IF CONSTRUED TO IMPOSE STRICT LIABILITY UPON A PERSON WHO AFFIXES AN AUTHORIZED SIGNATURE ON THE MAKER LINE OF A CHECK DRAWN ON THE CHECKING ACCOUNT OF A CORPORATION FOR THE PAYMENT OF CORPORATE OBLIGATIONS WHERE THE SIGNOR IS A MERE EMPLOYEE OF THE CORPORATION WHO HAS NO INTEREST, BENEFICIAL OR OTHERWISE, IN THE FUNDS, ASSETS, PROFITS, OR BUSINESS OF THE CORPORATION, AND WHERE SUCH SIGNATURE IS AFFIXED AT THE DIRECTION OF A CORPORATE OFFICER, SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, CONTRAVENES THE DUE PROCESS PROVISIONS OF AMENDMENT XIV OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1, SECTION 7, OF THE CONSTITUTION OF UTAH . . . . .

17

CONCLUSION . . . . .

23

ADDENDUM I

ADDENDUM II

ADDENDUM III

# TABLE OF AUTHORITIES

(Cases Cited)

	<u>PAGE</u>
<u>ABC League v. Missouri State High School Activities Ass'n.</u> , 530 F.Supp. 1033, 1047 (D.C. Ed.Mo 1982) . . .	20
<u>Benelli v. City of New Orleans</u> , 478 So.2d 1370, 1372 (La. 1985) . . . . .	20,21
<u>Bountiful City v. DeLuca</u> , 77 Utah 107, 292 P.2d 194, 201 (1930) . . . . .	19,21
<u>Critchlow v. Monson</u> , 102 Utah 378, 131 P.2d 794 (1942). . .	15
<u>Department of Insurance v. Dade County Consumer Advocate's Office</u> , 492 So.2d 1032, 1034 (Fla. 1986) . . . . .	20
<u>Equitable Life and Casualty Insurance Co. v. Inland Printing Co.</u> , 26 Utah2d 19, 484 P.2d 162 (1971) . . . .	10
<u>Grover v. Garn</u> , 23 Utah2d 441, 464 P.2d 598 (1970) . . . .	18
<u>Halling v. Industrial Commission</u> , 71 Utah 112, 263 Pac. 78, 81 (1927) . . . . .	18
<u>Howells, Inc. v. Nelson</u> , 565 P.2d 1147 (Utah 1977) . . . .	8,10
<u>Masich v. U. S. Smelting</u> , 113 Utah 101, 191 P2d 612 (1948) . . . . .	14
<u>Mominee v. Scherbarth</u> , 28 Ohio St.3d 270, 503, N.E.2d, 717, 770-721 (1986) . . . . .	20
<u>Nebbia v. New York</u> , 291 U.S. 502, 78 L.Ed. 940, 54 S.Ct. 505 (1934) . . . . .	20
<u>North Georgia Finishing v. Di-Chem</u> , 419 U.S. 601, 42 L.Ed.2d 751, 758, 95 S.Ct. 719 (1975) . . . . .	18,19
<u>Pace v. Thomas</u> , 111 Idaho 581, 726 P.2d 693, 698 (1986) . .	20
<u>Railroad Retirement Board v. Alton R. Co.</u> , 295 U.S. 330, 79 L.Ed. 1468, 55 S.Ct. 1468 (1935) . . . . .	20,21
<u>Stanton Transportation Co. v. Davis</u> , 9 Utah2d 184, 341 P.2d 207, 209 (1959). . . . .	12
<u>State v. Carpenter</u> , 301 N.W.2d 106, 16 ALR 4th 622 (N.D. 1980) . . . . .	22

	<u>PAGE</u>
<u>State v. One Porsche Two-Door, Etc.,</u> 526 P.2d 917 (Utah 1974) . . . . .	13
<u>State Ex Rel. Cook v. Saynes,</u> 713 S.W.2d 258 (Mo. 1986) . .	22
<u>Stratton v. West States Construction,</u> 21 Utah2d 60, 440 P.2d 117 (1968) . . . . .	10
<u>Vali Convalescent and Care Institution v. Industrial Commission,</u> 649 P.2d 33 (Utah 1982) . . . . .	20
<u>Wagstaff v. Remco, Inc.,</u> 540 P.2d 931 (Utah 1975) . . . . .	10
<u>Young v. Texas Company,</u> 8 Utah 2d 206, 331 P.2d 1099, 1100 (1958) . . . . .	9

(Statutes Cited)

Utah Code Ann. §7-15-1 (1953 as amended) (as enacted by Laws of 1981, Chapter 16, Section 13) . . . v,1,2,4,5,6,7, 8,9,10,11,12,14,15,16,17,18,19,20,21,22,23	
Utah Code Ann. §7-15-1 (1953 as amended) (as repealed by S.B. 134, 1981) . . . . .	11
Utah Code Ann. §7-15-2 (1953 as amended). . . . .	1
Utah Code Ann. §38-1-3 (1953 as amended). . . . .	12,13
Utah Code Ann. §58-37-13 (1953 as amended). . . . .	14
Utah Code Ann. §68-3-2 (1953 as amended) . . . . .	10
Utah Code Ann. §70A-1-104 (1953 as amended) . . . . .	16
Utah Code Ann. §70A-3-104(2)(b) (1953 as amended) . . . . .	15
Utah Code Ann. §70A-3-403 (1953 as amended) . . . . .	15,16,17
Utah Code Ann. §76-6-505 (1953 as amended) . . . . .	22
Utah Code Ann. §78-2-2 (1953 as amended) . . . . .	vi

	<u>PAGE</u>
Rules of the Utah Supreme Court, Rule 3(a) . . . . .	vi
Utah Rules of Appellate Procedure, Rule 3(a) . . . . .	vi
Utah Rules of Civil Procedure, Rule 12(c) . . . . .	9
Uniform Commercial Code, §3-403 . . . . .	6,15
Uniform Commercial Code, §3-403(2) . . . . .	16

(Constitutional Provisions Cited)

United States Constitution, Amendment V . . . . .	20
United States Constitution, Amendment XIV . . . . .	v,6,18,19,20
Constitution of Utah, Article I, §7 . . . . .	v,6,18,19,20
Constitution of Utah, Article VIII, §3 & §5 . . . . .	vi

(Miscellaneous Citations)

Senate Bill 134 (L. 1981, Ch. 16, Sec. 13, as enacted in 1981) . . . . .	7,11,12,15,17,20
16A AmJur 2d Constitutional Law §816 . . . . .	20
18B AmJur 2d Corporations, §1829 . . . . .	10
18B AmJur 2d Corporations, §1846 . . . . .	10
18B AmJur 2d Corporations, §1847 . . . . .	10
Annotation: "Constitutionality of 'Bad Check' Statute", 16 ALR 4th 631 . . . . .	22
Annotation: "Construction and Application of U.C.C. §3-403(2) Dealing with Personal Liability of Authorized Representative Who Signs a Negotiable Instrument in His Own Name", 97 ALR3d 798 §§4[b], 8, 9, 10[b], 11[b] . . .	16
Annotation: "Supreme Court's View as to Applicability, to Conduct of Private person or Entity, of Equal Pro- tection and Due Process Clauses of the Fourteenth Amendment", 42 L.Ed.2d 922 . . . . .	19



## JURISDICTION

Jurisdiction for this appeal is conferred by Article VIII, Section 3 of the Constitution of Utah, Rule 3(a) of the Rules of the Utah Supreme Court, and by Section 78-2-2, Utah Code Annotated 1953, as amended. At the time Notice of Appeal was filed, jurisdiction for this appeal was conferred by Article VIII, Sections 3 and 5 of the Constitution of Utah, and by Rule 3(a), Utah Rules of Appellate Procedure.

### STATEMENT OF ISSUES

(1) Did the trial court commit reversible error by ruling that Section 7-1-15, Utah Code Annotated 1953, as amended, imposes strict personal liability upon a person who signs a check drawn on the checking account of a corporation for the payment of a corporate obligation where the signer is a mere employee of the corporation who has no interest, beneficial or otherwise, in the funds, assets, profits or business of the corporation, and where such signature is affixed at the direction of the office of the corporation?

(2) Should Section 7-15-1, Utah Code Annotated 1953, as amended, be construed to impose strict liability upon a corporate employee for the amount of a corporate check issued by the corporation in payment of a corporate debt simply because the employee signed the check under the direction of a corporate officer where the corporate employee has no interest, beneficial or otherwise, in the funds, assets, profits or business of the corporation?

(3) Would the construction of Section 7-15-1, Utah Code Annotated 1953, as amended, to impose strict liability upon a mere corporate employee without any interest, beneficial or otherwise, in the funds, assets, profits, or business of the corporation who signs a check drawn on a corporate account for the payment of a corporate debt constitute the taking of property without due process of law in derogation of the rights guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article I, Section 7 of the Constitution of Utah?

## CONSTITUTIONAL PROVISIONS AND STATUTES

### Constitutional Provisions:

"All persons persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall made or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [Emphasis added] Amendment XIV, Section I, Constitution of the United States.

"No persons shall be deprived of life, liberty or property, without due process of law." [Emphasis added] Article I, §7, Constitution of Utah.

### Statutes:

Section 7-15-1, Utah Code Annotated 1953, as amended, as enacted by the laws of 1981, Chapter 16, Section 13. (A photo copy of this section, verbatim, is set forth at the end of this brief as Addendum I).

Section 7-15-1, Utah Code Annotated 1953, as repealed by S.B. 134, 1981. (A photo copy of this section, verbatim, is set forth at the end of this brief as Addendum II).

Section 70A-3-403, Utah Code Annotated 1953, as amended. (A photo copy of this section, verbatim, is set forth at the end of this brief as Addendum III).

IN THE SUPREME COURT OF THE STATE OF UTAH

---

MOUNTAIN STATES TELEPHONE	:	
AND	:	
TELEGRAPH COMPANY,	:	
Plaintiff and	:	
Respondent	:	
v.	:	
TERRY J. STEPHENSON and	:	Case No. 860268
JILL M. PAYNE,	:	
Defendants.	:	
JILL M. PAYNE, Defendant &	:	
Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE CASE

This is an appeal from an Order granting plaintiff's Motion for Judgment on the Pleadings, from the Judgment entered pursuant thereto, and from an Order Denying Defendant's Motions (Alternative Motions for Relief from Order, Amendment of Judgment, New Trial, Judge N.O.V., and Findings of Fact and Conclusions of Law) in a civil action brought by Plaintiff against Defendant and Terry J. Stephenson under Sections 7-15-1 and 2, Utah Code Annotated 1953, as amended. After Defendant/Appellant Payne filed two letters in the form of answers, the second one supported by an affidavit, the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Scott Daniels, Judge, presiding, entered an Order granting plaintiff's Motion for Judgment on the

Pleadings. A Judgment was filed pursuant thereto. After hearing on Ms. Payne's Motions (Alternative Motions for Relief from Order, Amendment of Judgment, New Trial, Judge N.O.V., and Findings of Fact and Conclusions of Law) the Court, Judge Daniels presiding, entered an Order denying said motions.

#### STATEMENT OF FACTS

Plaintiff/Respondent, Mountain States Telephone and Telegraph Company (hereinafter MST&T) filed a complaint in a civil action against Terry J. Stephenson (hereinafter Stephenson) and Defendant/Appellant Jill M. Payne (hereinafter Ms. Payne) alleging in Counts I through III that Stephenson was liable to them and in Counts IV through VI that Ms. Payne was liable to them, all under the provisions of Section 7-15-1 (R.2-6). Both defendants were properly served. Stephenson failed to appear or answer, and Judgment by Default was entered against him on December 9, 1982 (R.13-14).

Ms. Payne timely wrote a letter to counsel for MST&T referring to the Summons and explaining that she was a mere employee and did what she did under the direction of Stephenson (R.8). No further action was taken regarding the claim against Ms. Payne until approximately thirty-nine months later when MST&T filed a Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment wherein MST&T contended that Ms. Payne answered the complaint but did not deny liability for the debt (R.18-19).

Ms. Payne promptly filed another document and served it on MST&T's attorney whereby she denied liability on Counts IV

through VI concerning her, asked for dismissal of those counts, and clearly spelled out that she was acting only as an emanuensis for NAMCO Corporation (R.24) and supported said document with an affidavit (R.25).

The trial court entered an Order Granting Plaintiff's Motion for Judgment (R.26) after a hearing in which Ms. Payne appeared, pro se, which hearing was not reported by the court reporter (R.29). Judgment for various amounts totalling \$2,896.76 was entered on April 8, 1986 (R.27).

Ms. Payne promptly arranged for counsel through the Volunteer Lawyers' Project of the Utah State Legal Services who filed Alternative Motions for Relief from Order, Amendment of Judgment, New Trial, Judgment N.O.V., and Findings of Fact and Conclusions of Law (R.31-38) supported by the affidavit of Ms. Payne (R.39-42).

Ms. Payne's letters (R.8 and 24), which MST&T acknowledges to constitute answers (R.19), and her affidavits (R.25 and 39-42) set forth facts from which it is clear:

(1) That the checks in question were drawn on a corporation account;

(2) That they were issued in payment of pre-existing corporate debts;

(3) That she had no interest, beneficial or otherwise, in the checking account, the funds in the checking account, the corporation, or its property or business;

(4) That she was a mere employee of the corporation and not an officer, director or shareholder therein;

(5) That she was directed to sign and issue such checks by Stephenson, her superior and an officer in the corporation; and

(6) That at the time the checks were issued, there were funds in said account to cover the check or Stephenson told her that he was depositing funds which would cover the checks; and that there were other employees authorized to sign on the account who from time to time issued checks against the account.

After hearing on Ms. Payne's Alternative Motions, Judge Daniels denied the motions (R.47, 48-49, 70), expressing his reluctance to do so but concluding that Section 7-15-1 imposed strict liability and that he had no choice (R.68-69).

The Minute Entry reflecting the hearing on Plaintiff's Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment does not specify whether the Court was granting Plaintiff's Motion for Judgment on the Pleadings or its alternative Motion for Summary Judgment. It merely recites, "that the Plaintiff's Motion for Judgment is hereby granted" (R.26). An Order, subsequently signed by Judge Daniels and filed, is denominated "Order Granting Plaintiff's Motion for Judgment on the Pleadings". Said Order recites that it is granting "Plaintiff's Motion for Judgment on the Pleadings" (R.29-30).

It is not clear from the file whether the Court considered Ms. Payne's Affidavit accompanying her second letter (R.25). At the hearing on Defendant's Alternative Motions, Judge Daniels stated that he "didn't really grant the Motion

because I didn't think her pleadings were adequate. I granted it because I thought she didn't have a defense." (R.58). Later in the hearing Judge Daniels stated, "I recall the hearing and I was under the impression she doesn't deny signing the checks." \* \* \* "Well, I think she says in her pleadings, I don't think she denies it. I think there's no genuine issue of material fact." (R.69). Even later in the hearing Judge Daniels stated, "Well, I don't think you even can have findings of fact and conclusions of law in a -- I don't think they are appropriate. I don't think it's an appropriate pleading on the motion for summary judgment for the reason that I stated that, and you know, I think I'll have to -- if you go up on appeal, I'll have to leave with what the pleadings say, but the Motions will be denied." (R.70).

Judge Daniels declined to order or enter findings of fact or conclusions of law reflecting his rationale (R.69-70). As a consequence, Appellant is limited in her record to the contents of the District Court file and the transcript for facts and bases for this Court's rulings.

#### SUMMARY OF ARGUMENTS

Jill M. Payne, one of the defendants below and the appellant here first contends that the Entry of Judgment in this case was error and that the Judgment entered by the trial court below should be reversed and the case remanded for trial on the issues raised by Ms. Payne in her Answers and Affidavits.

Ms. Payne second contends that the trial court erred in construing §7-15-1 as imposing strict liability upon her simply because she signed checks in payment for corporate obligations



in behalf of her employer, NAMCO Corporation. Ms. Payne argues that such construction is inappropriate because (a) she would not otherwise be liable on the corporation's debts, (b) the statute as construed by the lower court is penal in nature and should be strictly construed, (c) such construction does not effect the objects of the statute nor does it promote justice, (d) such construction is inconsistent with §3-403 of the Uniform Commercial Code.

Ms. Payne's third contention is that construction of §7-15-1 as imposing strict construction on Ms. Payne renders it unconstitutional under the substantive Due Process Provisions of the Fourteenth Amendment to the Constitution of the United States and Article I, §7 of the Constitution of Utah. Ms. Payne's argument is that as construed, §7-15-1 is invalid on substantive due process grounds because it does not bear a rational, real, or substantial relation to legitimate government interests and because it is unreasonable and arbitrary in its application to her.

ARGUMENT:

POINT I.

SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, DOES NOT IMPOSE STRICT PERSONAL LIABILITY UPON A PERSON WHO AFFIXES AN AUTHORIZED SIGNATURE ON THE MAKER LINE OF A CHECK DRAWN ON THE CHECKING ACCOUNT OF A CORPORATION FOR THE PAYMENT OF CORPORATE OBLIGATIONS WHERE THE SIGNER IS A MERE EMPLOYEE OF THE CORPORATION WHO HAS NO INTEREST, BENEFICIAL OR OTHERWISE, IN THE FUNDS, ASSETS, PROFITS, OR BUSINESS OF THE CORPORATION AND WHERE SUCH SIGNATURE IS AFFIXED AT THE DIRECTION OF AN OFFICER OF THE CORPORATION.

In its regular session in 1981, the Utah Legislature by S.B. 134 repealed the then-existing §7-15-1 and enacted §7-15-1 as it now exists. See L. 1981, Ch. 16, Sec. 13. As enacted in 1981, §7-15-1 (set out verbatim as Addendum I) provides in pertinent part:

7-15-1. (1) Any person who makes, draws, signs or issues any check . . . upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any . . . firm . . . or corporation any . . . thing of value or paying for service, . . . which check . . . is not honored upon presentment and is marked "Refer to Maker" or the account with the depository upon which the check . . . has been made or drawn, . . . does not have sufficient funds or sufficient credit with such depository for payment of the check . . . in full, shall be liable to the holder thereof.

(2) The holder of the check . . . which has been dishonored may give written or verbal notice thereof to the person making, drawing, signing, or issuing the check . . . and may impose a service charge not to exceed \$5.00 in addition to any contractual agreement between the parties. Prior to filing an action based upon this section, the holder of the dishonored check . . . shall give the person making, drawing, signing, or issuing the dishonored check . . . written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus a service charge is imposed for the dishonored check . . . .

(3) In a civil action the person making, drawing, signing, or issuing the check . . . shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and a reasonable attorney's fees." [Emphasis added].

Prior to its repeal, the original §7-15-1 (set out verbatim as Addendum II) provided in pertinent part:

7-15-1. (1) Any person who willfully, with intent to defraud, makes, draws or issues any check . . . upon any bank, banking association or other depository for the purpose of obtaining from any . . . firm . . . or corporation any . . . thing of value or paying for any services, . . . which check . . . is not honored upon presentment because the maker, drawer or issuer . . . does not have sufficient funds in such account or sufficient credit with such depository for payment of the check . . . in full, shall be liable to the holder of the check . . . in a civil action as provided in this section.

(2) In such civil action the person making, drawing or issuing the check . . . shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney fee. [Emphasis added].

Under the law as it existed prior to 1981, a payee seeking to impose civil liability upon a maker who signed the check in his representative capacity was required to pierce the corporate veil and, somehow, establish that the signer did so with intent to defraud. Howells, Inc. v. Nelson, 565 P.2d 1147 (Utah 1977).

Section 7-15-1 as it exists now, and has existed at all relevant times to this action, does not include the language contained in the pre-1981 statute, "willfully, with intent to defraud." Moreover, the language, "whether as corporate agent or otherwise" is inserted. Although the exact rationale of the Trial Court is unknown, for the Trial Court declined to enter

or order findings of fact or conclusions of law, apparently these are the changes by which it is claimed that strict liability is imposed upon Ms. Payne.

Apparently the Trial Court's position was that the re-enactment of Section 7-15-1 without the words, "willfully, with intent to defraud" eliminated the necessity that a plaintiff establish intent or fault as a prerequisite to recovery on a check.

It is also apparent that the Court reasoned that the re-enactment of the statute with the additional words, "whether as corporate agent or otherwise" made the fact that Ms. Payne was acting in a representative capacity immaterial.

It is Ms. Payne's position that in spite of these changes she is not subject to strict liability as an amanuensis for the corporation and its officers.

Although the record is ambiguous with respect to whether the trial court considered matters outside the pleadings and whether the court granted the Motion for Judgment on the Pleadings or the Motion for Summary Judgment, the record is clear that an affidavit outside the pleadings had been filed and the court verbally indicated that he considered it.

In the state of this record it matters little which Motion was granted. This court in considering factual matters should view all factual matters presented and all inferences fairly arising therefrom in a light most favorable to Ms. Payne. Young v. Texas Company, 8 Utah 2d 206, 331 P.2d 1099, 1100 (1958); Rule 12(c), Utah Rules of Civil Procedure.

Clearly, absent a determination that §7-15-1 imposes personal liability upon Ms. Payne, she would have no liability for the corporate debts of NAMCO. MST&T's pleadings allege no facts which would establish such liability under the common law or pursuant to statute. See Howells, Inc. v. Nelson, supra.; Stratton v. West States Construction, 21 Utah2d 60, 440 P.2d 117 (1968); Equitable Life and Casualty Insurance Co. v. Inland Printing Co., 26 Utah2d 19, 484 P.2d 162 (1971); Grover v. Garn, 23 Utah2d 441, 464 P.2d 598 (1970); 18B AmJur2d, Corporations §1829.

A. SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, SHOULD NOT BE CONSTRUED TO IMPOSE STRICT LIABILITY UPON A CORPORATE EMPLOYEE FOR THE AMOUNT OF A CORPORATE CHECK ISSUED BY THE CORPORATION IN PAYMENT OF A CORPORATE DEBT SIMPLY BECAUSE THE EMPLOYEE SIGNED THE CHECK UNDER THE DIRECTION OF A CORPORATE OFFICER.

Section 7-15-1 is penal in nature since it does not directly relate to the loss which MST&T would sustain by reason of the violation of the statute. 18B AmJur 2d, Corporations §1847. Where a statute is deemed to be penal in nature it must be strictly construed and cannot be extended beyond the clear import of its language. 18B AmJur 2d, Corporations §1846; Wagstaff v. Remco, Inc., 540 P.2d 931 (Utah 1975).

The Utah statute governing statutory construction provides in §68-3-2:

The rule of common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the

laws of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice. . . [Emphasis added].

The penal nature of §7-15-1 and the mandate of §68-3-2 require that close scrutiny be given to §7-15-1 to ensure that the objects of S.B. 134 be effected and that justice be promoted.

S.B. 134 was entitled "Financial Institutions Act of 1981." Its descriptive heading recited that it was:

An act relating to financial institutions; clarifying supervisory powers of the Department of Financial Institutions; subjecting previously unregulated financial services to supervision and regulation by the Department; limiting the jurisdiction of the Department to prevent overlapping and duplicating regulation; granting state chartered financial institutions the same operating powers as Congress has granted federally chartered institutions; providing for reciprocity with regard to the entry of foreign financial institutions, subject to a showing of public need; repealing certain chapters of Title 7 that formerly governed financial institutions; and providing an effective date.

The bill further provided:

This act repeals Chapters 1, 2, 3, 4, 5, 7, 8, 8a, 9, 11, 13, 14, 15, and 18 of Title 7, Utah Code Annotated 1953, and enacts Chapters 1, 2, 3, 4, 5, 7, 8, 8a, 9, 11, 14, and 15 of Title 7, Utah Code Annotated 1953."

Nothing in the language of the bill itself reflects the objects effected by the re-enactment of §7-15-1 in its present form. Nothing in its legislative history reflects the objects to be effected by the changes made in §7-15-1 or the other sections

of that Chapter 15. Resort to the record of the discussion and debate of S.B. 134 on the floor discloses that Chapter 15 was not even discussed.

The author of this brief has been unable to find any cases in this state which cast any light on what objects are to be effected by, or which construe, §7-15-1 in its present form nor has he been able to find comparable statutory provisions in other states.

In a case of first impression construing Section 38-1-3, a mechanics' lien statute, Justice Crockett wrote for a unanimous court:

"When uncertainty exists as to the interpretation and application of a statute, it is appropriate to look to its purpose in the light of its background and history, and also to the effect it will have in practical application." Stanton Transportation Co. v. Davis, 9 Utah2d 184, 341 P.2d 207, 209 (1959).

Judge Crockett's opinion went on:

"While it is true that our statutes are to be liberally construed to give effect to their purpose and to promote justice, it is equally true that they should not be distorted beyond the intent of the legislature. This principle is particularly applicable in a situation of this kind where a liability is imposed upon a property owner beyond what he contracted to bear for the improvement of his property. In order to impose upon him such additional burdens the law must clearly spell out the responsibility." [Emphasis added].

\* \* \*

". . . If a departure from the traditional coverage of the lien laws is to be effected it should be by a clearer manifestation of

intent of the legislature than is shown in the manner in which this statute has come to its present form." [Emphasis added] 341 P.2d at 210.

The opinion goes on to discuss the purpose and effect of Section 38-1-3:

". . . the statute was purposed to protect a contractor or laborer from loss for labor or materials actually used on the job, but was not intended to permit one to furnish himself with permanent equipment while working on a job and claim a lien on that property. To hold otherwise could lead to inequitable results and would accommodate itself to machinations to fleece a property holder. . . ." 341 P.2d at 211.

In State v. One Porsche Two-Door, Etc., 526 P.2d 917 (Utah 1974), this court was confronted with the construction of Section 58-37-13, the controlled substances forfeiture statute. In that case the owner of the vehicle was arrested in possession of one ounce of marijuana and forfeiture of a \$10,000 automobile was sought by the state. In that case Justice Henriod, writing for a divided court, wrote:

". . . it is conceded that basis for the charge is that one ounce of marijuana was being carried by Price [the owner] who was a university student in Lawrence, Kansas. But it is undisputed that his sole purpose for being in Utah was to visit the Arches National Monument, -- not to transport a controlled substance." [Emphasis by the court]. 526 P.2d at 918.

Justice Henriod later wrote:

"This whole case leads to an unconscionable forfeiture, and that the trial court was correct in concluding that the enormity of the forfeiture [a Porsche automobile valued



at \$10,000] hardly could fit the \$299  
misdemeanor." 526 P.2d at 918.

Quoting from Masich v. U. S. Smelting, 113 Utah 101, 191  
P2d 612 (1948), Justice Henriod went on to write:

"'One of the cardinal principles of  
statutory construction is that the courts  
will look to the reason, spirit, and sense  
of the legislation, as indicated by the  
entire context and subject matter of the  
statute dealing with the subject.'"

"The statute obviously can lead to the most  
absurd results, -- a reason this court  
consistently has pointed up as a valid  
reason for invalidation of a statute, or a  
refusal to apply it under particular facts  
making such application ridiculous. . ."  
526 P.2d at 919.

If the object to be effected by the re-enactment of  
§7-15-1 in its present form is to give a creditor a more  
expeditious remedy against a debtor who pays the debt with an  
insufficient funds check than it would have in the enforcement  
of the debt where it had not been paid by check or otherwise,  
the statute accomplishes its objective without construing it to  
impose strict liability upon someone other than the debtor. It  
cannot be said that justice would be promoted by imposing  
liability for NAMCO's debts on Ms. Payne.

If the object sought to be effected by enactment of  
§7-15-1 is to penalize any person who affixes his signature to  
a check under any circumstance which for any reason is not paid  
because of insufficient funds, it accomplishes that objective,  
but in so doing, and as so construed, is extremely harsh where,  
as in this case, the signer is not at fault.

position of Mrs. Payne of their property without due process of law. See argument under Point II below.

If there are two possible statutory constructions, one of which will render the statute constitutional and the other unconstitutional, the interpretation which will save the statute should be adopted. Critchlow v. Monson, 102 Utah 378, 131 P.2d 794 (1942).

Surely the Legislature cannot be imputed to have intended that §7-15-1 have such broad and harsh construction. This court should adopt a construction of §7-15-1 which recognizes that the legislature, in enacting S.B. 134, had the object of providing an efficient remedy against an actual debtor and did not intend to penalize an innocent employee who signs a check at the direction of her employer. Such construction would effect the objects of S.B. 134 and would promote justice.

B. CONSTRUCTION OF SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, TO IMPOSE STRICT LIABILITY UPON A CORPORATE EMPLOYEE SIGNING A CORPORATE CHECK IN A REPRESENTATIVE CAPACITY IS INCONSISTENT WITH SECTION 70A-3-403, UTAH CODE ANNOTATED 1953, AS AMENDED.

The law of governing liability on negotiable instruments, including checks [§70A-3-104(2)(b), Utah Code Annotated 1953, as amended], is found in §3-403 of the Uniform Commercial Code (§70A-3-403, Utah Code Annotated 1953, as amended, set out verbatim as Addendum III).

S.B. 134 did not specifically or implicitly repeal

§70A-3-403 nor any of the provisions of the Uniform Commercial Code. Indeed, §70A-1-104 provides:

70A-1-104. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 70A-3-403, Utah Code Annotated 1953, as amended, provides the method for determining when the maker (signer) of negotiable instruments (including checks) is personally liable on the instrument. Where a check shows on its face either the name of the person (corporation) represented by the signer or that the signer is signing the check in a representative capacity, §70A-3-403(2)(b) allows the admission of extrinsic evidence to determine the intention of the parties to the instrument concerning the personal liability of the signer. See Annotation: "Construction and Application of U.C.C. §3-403(2) Dealing with Personal Liability of Authorized Representative Who Signs a Negotiable Instrument in His Own Name", 97 ALR3d 798 §§4[b], 8, 9, 10[b], 11[b], and cases collected therein. §70A-3-403 is inconsistent with §7-15-1 as construed to impose strict liability.

Subsection (3) of §70A-3-403 establishes that where the signer of a check which on its face shows the person (corporation) represented and shows that it signed as representative, the signer is not held personally liable on the check. 97 ALR3d at pps. 830-832.

Section 7-15-1 can reasonably be construed to avoid implied repealer of §70A-3-403 by construction which interprets §7-15-1 as merely providing an expedited remedy against a party who is liable under §70A-3-403.

In order to construe §7-15-1 as imposing strict liability, it is necessary to hold that S.B. 134 repealed §70A-3-403 or at least amended it to eliminate checks from its application. Surely the legislature cannot be imputed to have intended that §70A-3-403 be repealed or amended.

By enacting the Uniform Commercial Code in Utah, the legislature intended that the UCC be liberally construed and applied to promote its underlying purposes and policies which are: (a) to simplify, clarify, and modernize the law governing commercial transactions; (b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and (c) to make uniform the law among the various jurisdictions. See §70A-1-102(1) and (2), Utah Code Annotated 1953, as amended. The uniform application and the liberal construction intended for the Uniform Commercial Code would be defeated by the construction of §7-15-1 to impose strict liability upon Ms. Payne under the facts of this case. Such construction is not warranted (see argument under Point IA, supra) and should not be affirmed by this court.

#### POINT II.

IF CONSTRUED TO IMPOSE STRICT LIABILITY UPON  
A PERSON WHO AFFIXES AN AUTHORIZED SIGNATURE  
ON THE MAKER LINE OF A CHECK DRAWN ON THE  
CHECKING ACCOUNT OF A CORPORATION FOR THE

PAYMENT OF CORPORATE OBLIGATIONS WHERE THE SIGNOR IS A MERE EMPLOYEE OF THE CORPORATION WHO HAS NO INTEREST, BENEFICIAL OR OTHERWISE, IN THE FUNDS, ASSETS, PROFITS, OR BUSINESS OF THE CORPORATION, AND WHERE SUCH SIGNATURE IS AFFIXED AT THE DIRECTION OF A CORPORATE OFFICER, SECTION 7-15-1, UTAH CODE ANNOTATED 1953, AS AMENDED, CONTRAVENES THE DUE PROCESS PROVISIONS OF AMENDMENT XIV OF THE CONSTITUTION OF THE UNITED STATES AND ARTICLE 1, SECTION 7, OF THE CONSTITUTION OF UTAH.

Amendment XIV of the Constitution of the United States provides in part pertinent to this case:

" . . . nor shall any state deprive any person of . . . property without due process of law . . . ."

Article I, Section 7 of the Constitution of Utah, provides in part, pertinent to this case, as follows:

"No person shall be deprived of . . . property, without due process of law."

For due process purposes, different kinds of property are not distinguished. North Georgia Finishing v. Di-Chem, 419 U.S. 601, 42 L.Ed.2d 751, 758, 95 S.Ct. 719 (1975). "Property" includes a bank account which has been subjected to garnishment. 42 L.Ed.2d at 757. It includes a vested right of action. Halling v. Industrial Commission, 71 Utah 112, 263 Pac. 78, 81 (1927). And it includes the money or other assets of Ms. Payne which are subject to being seized in enforcement of the Judgment rendered by the trial court in this case.

The (1) enactment of §7-15-1 by the Legislature, (2) the construction of it as imposing strict liability, and (3) the award of judgment in favor of MST&T under it by the trial court

constitutes sufficient involvement by the State of Utah to constitute State action within the proscription of the Fourteenth Amendment of the Constitution of the United States, "nor shall any State deprive any person. . ." [Emphasis added] North Georgia Finishing v. Di-Chem, supra. See also, Annotation: "Supreme Court's View as to Applicability, to Conduct of Private Person or Entity, of Equal Protection and Due Process Clauses of the Fourteenth Amendment", 42 L.Ed.2d 922 and cases collected thereunder.

A law is considered as being a "deprivation of property" within the meaning of the due process clauses of the Federal and State Constitutions if it deprives an owner of one of the essential attributes of property, or destroys its value, or restricts or interrupts its common, necessary or profitable use, or hampers the owner in the application of it to the purposes of trade or imposes conditions upon the right to hold or use it, and thereby seriously impairs its value. Bountiful City v. DeLuca, 77 Utah 107, 292 P.2d 194, 201 (1930).

The concept of due process, within the meaning of the State and Federal Constitutions, has a dual aspect, substantive and procedural. It is the main thrust of this point of Ms. Payne's Argument that she has been deprived of her property without due process of law and that such deprivation was in derogation to her right to substantive due process.

Application of §7-15-1 to a person in Ms. Payne's position as imposing strict liability has the effect of requiring her to be liable for the debt of another (NAMCO) without fault on her part. See Argument under Point I, supra.

A Legislative enactment is deemed invalid on substantive due process grounds unless it bears a rational, that is real and substantial, relation to legitimate governmental interests, that is public health, safety, morals, or general welfare of the public, or if it is unreasonable or arbitrary. See Railroad Retirement Board v. Alton R. Co., 295 U.S. 330, 79 L.Ed. 1468, 55 S.Ct. 1468 (1935), applying the Due Process Provisions of the Fifth Amendment and citing Nebbia v. New York, 291 U.S. 502, 78 L.Ed. 940, 54 S.Ct. 505 (1934) which applied Fourteenth Amendment due process principles to State legislation; ABC League v. Missouri State High School Activities Ass'n., 530 F.Supp. 1033, 1047 (D.C. Ed.Mo 1982), Mominee v. Scherbarth, 28 Ohio St.3d 270, 503, N.E.2d, 717, 770-721 (1986); Benelli v. New Orleans, 478 So.2d 1370, 1372 (La. 1985); Department of Insurance v. Dade County Consumer Advocate's Office, 492 So.2d 1032, 1034 (Fla. 1986); Pace v. Thomas, 111 Idaho 581, 726 P.2d 693, 698 (1986). See also, 16A AmJur 2d, Constitutional Law §816.

Decisions relating to the Fifth and Fourteenth Amendment of the United States Constitution are highly persuasive when interpreting the Due Process Clause of the Utah Constitution. Vali Convalescent and Care Institution v. Industrial Commission, 649 P.2d 33 (Utah 1982).

Just what government interests are thought to be promoted and protected by the enactment of §7-15-1, other than the regulation of financial institutions, is not apparent from the legislation itself. S.B. 134 was entitled "Financial

Institutions Act of 1981." Its descriptive heading, set forth verbatim at pages 11 and 12 of this brief, describes no other governmental interest or purpose. The trial court suggested no governmental interest in its rulings.

If the governmental interest sought to be promoted by the enactment of §7-15-1 was the supervision and regulation of financial institutions, the enactment of and construction of §7-15-1 in its present form, as opposed to its form prior to 1981, to impose strict liability, bears no perceptibly rational, real, or substantial relationship to that interest. Taking of the property of Ms. Payne and bestowing it upon MST&T is arbitrary and unreasonable. Railroad Retirement Board v. Alton R. Co., 79 L.Ed. at 1476; Benelli v. City of New Orleans, 478 So.2d at 1374.

If the interest sought to be furthered by the enactment of §7-15-1 is to facilitate commercial dealings by providing a more expeditious remedy against a debtor, §7-15-1, construed to impose strict liability upon Ms. Payne, has no relation to that interest for the simple reason that Ms. Payne was not a debtor of AT&T and the construction of that statute to impose strict liability upon her is totally unreasonable and arbitrary. Bountiful City v. DeLuca, Supra.

If the government interest sought to be furthered by the enactment of §7-15-1 is to promote commerce by penalizing persons who impede commerce by issuing insufficient funds checks, there is a rational relationship between §7-15-1 and that interest. There is no indication that the legislature



sought to promote that interest by the enactment of §7-15-1 in its present form and that interest is already served by the Bad Check Statute in the Criminal Code. See §76-6-505, Utah Code Annotated 1953, as amended. Of the two ways of violating Section 76-6-505, the method proscribed by Sub-section (1) requires a culpable mental state, that is, knowledge that the check will not be paid by the drawee. The method of violating Sub-section (2) does not, on its face, require a culpable mental state. In fact, the provisions of Sub-section (2) remarkably parallel §7-15-1 in its present form. Of course, any criminal statute which does not contain a mens rea without some apparent reason for that omission is constitutionally suspect. Similar statutes have been held unconstitutional. See State v. Carpenter, 301 N.W.2d 106, 16 ALR 4th 622 (N.D. 1980). See Annotation: "Constitutionality of 'Bad Check' Statute", 16 ALR 4th 631 and cases collected thereunder.

If §7-15-1 is construed to impose strict liability on the theory that it, in effect, creates an irrebuttable presumption that Ms. Payne issued the check willfully and with intent to defraud, it contravenes the procedural aspect of the Due Process Clause. State Ex Rel. Cook v. Saynes, 713 S.W.2d 258 (Mo. 1986).

Construction of §7-15-1 as imposing strict liability upon a person in Ms. Payne's position serves no legitimate government interest. There may be legitimate government interests served by imposing strict liability upon debtors who sign checks in payment for debts that they owe or who sign

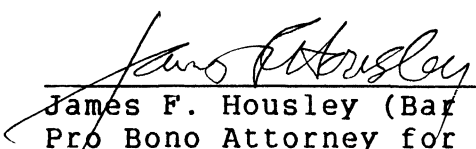
checks upon accounts which they own, in which they have an ownership interest, or over which they have control of the funds which go into, or come out of, the accounts. But the construction of §7-15-1 as imposing strict liability upon others, such as Ms. Payne, to serve that interest does not have a real, reasonable, or rational relation to that interest and its application to someone in the position of Ms. Payne is unreasonable and arbitrary. MST&T dealt with a corporation (NAMCO), provided services to the corporation, billed the corporation for those services, and accepted the corporation's checks in payment of corporation's debts for those services. To construe §7-15-1 as allowing MST&T to collect the corporation's debts from a mere employee of the corporation is an unreasonable and arbitrary construction.

#### CONCLUSION

Judge Daniels felt that he had no choice but to construe §7-15-1 as imposing strict liability upon Ms. Payne because she signed the checks and he did so in spite of the fact that she signed them as a mere corporate emanuensis. This Court should adopt a construction of §7-15-1 which is reasonable, and consistent with the State statutes governing, and principles of, statutory construction, and not inconsistent with the Uniform Commercial Code. Under such construction Ms. Payne would not be liable if she signed the checks as a representative of the corporation who was not liable for the corporate debts, who signed the checks under the direction of the corporate officers who supervised her, and who had no interest in the corporation,

its business, or the checking account. The substantive Due Process Clauses of the Federal and Utah State Constitutions require such construction. This Court should reverse the trial court's Entry of Judgment for MST&T and should remand this case back for trial on the issues raised by Ms. Payne.

Respectfully submitted this 22 day of September, 1987.

  
James F. Housley (Bar #1545)  
Pro Bono Attorney for Defendant  
and Appellant, Jill M. Payne  
Volunteer's Lawyer's Project  
Utah State Legal Services  
2001 S State St #S3700  
Salt Lake City, Utah 84190-1200  
Telephone: (801) 468-2617

CERTIFICATE OF SERVICE

Filed ten (10) copies of the within Brief with the Supreme Court of the State of Utah and served four (4) copies on the Plaintiff and Respondent by delivering said copies to its counsel, Floyd A. Jensen, Attorney for Mountain States Telephone & Telegraph Company, this 22 day of September, 1987.

By 

ADDENDUM I

(Section 7-15-1, Utah Code Annotated 1953, as amended,  
as enacted by Laws of 1981, Chapter 16, Section 13)

**7-15-1. Civil liability of issuer — Notice.** (1) Any person who makes, draws, signs or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any service, wages, salary or rent, which check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account with the depository upon which the check, draft, order, or other instrument has been made or drawn, does not exist, has been closed or does not have sufficient funds or sufficient credit with such depository for payment of the check, draft, or other instrument in full, shall be liable to the holder thereof.

(2) The holder of the check, draft, order, or other instrument which has been dishonored may give written or verbal notice thereof to the person making, drawing, signing, or issuing the check, draft, order, or other instrument and may impose a service charge not to exceed \$5 in addition to any contractual agreement between the parties. Prior to filing an action based upon this section, the holder of a dishonored check, draft, order, or other instrument shall give the person making, drawing, signing, or issuing the dishonored check, draft, order, or other instrument written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus a service charge is imposed for the dishonored check, draft, order, or other instrument.

(3) In a civil action the person making, drawing, signing or issuing the check, draft, order, or other instrument shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

**History:** C. 1953, 7-15-1, enacted by L. 1981, ch. 16, § 13.

ADDENDUM II

(Section 7-15-1, as repealed by S.B. 134, 1981)

7-15-1. Drawing or issuing against nonexistent account or insufficient funds—Intent to defraud—Civil liability—Damages.—(1) Any person who willfully, with intent to defraud makes, draws or issues any check, draft or order upon any bank, banking association or other depository for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any services, wages, salary or rent, which check, draft or order is not honored upon presentment because the maker, drawer or issuer does not have the account with the depository upon which the check, draft or order has been made or drawn, or does not have sufficient funds in such account or sufficient credit with such depository for payment of the check, draft or order in full, shall be liable to the holder of the check, draft or order in a civil action as provided in this section.

(2) In such civil action the person making, drawing or issuing the check, draft or order shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

History: L. 1969, ch. 240, § 1.

ADDENDUM III

(Section 70A-3-403, Utah Code Annotated 1953, as amended)



**70A-3-403. Signature by authorized representative.**

- (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.
- (2) An authorized representative who signs his own name to an instrument
  - (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;
  - (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.
- (3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

**History:** L. 1965, ch. 154, § 3-403.