

TITLE 80
UNIFORM COMMERCIAL CODE
ARTICLE 1
GENERAL PROVISIONS

Oklahoma Statutes

Commercial code, general provisions, see 12A O.S. § 1–101 et seq.

PART 1. GENERAL PROVISIONS

§ 1–101. Short titles

Short Titles

- (a) This Act may be cited as the Uniform Commercial Code.
- (b) This article may be cited as Uniform Commercial Code—General Provisions.

History

Source. LA 26–03, eff. October 2, 2003.

§ 1–102. Scope of article

Scope of Article

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

History

Source. LA 26–03, eff. October 2, 2003.

**§ 1–103. Construction of Uniform Commercial Code to promote its purposes and policies—
Applicability of supplemental principles of law**

Construction of Uniform Commercial Code to Promote its Purposes and Policies—Applicability of Supplemental Principles of Law

- (a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
 - (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
 - (3) to make uniform the law among the various jurisdictions.
- (b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Statutes <KEY>1122, 1210.

Westlaw Topic No. 361.

C.J.S. Statutes §§ 364, 372 to 374, 472, 474 to 482.

§ 1–104. Construction against implied repeal

Construction Against Implied Repeal

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Statutes <KEY>1500.

Westlaw Topic No. 361.

C.J.S. Statutes §§ 346 to 347.

§ 1–105. Severability

Severability

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Statutes <KEY>1535(19).

Westlaw Topic No. 361.

§ 1–106. Use of singular and plural—Gender

Use of Singular and Plural—Gender

In the Uniform Commercial Code, unless the statutory context otherwise requires:

- (1) words in the singular number include the plural, and those in the plural include the singular; and
- (2) words of any gender also refer to any other gender.

History

Source. LA 26–03, eff. October 2, 2003.

§ 1–107. Section captions

Section Captions

Section captions are part of The Uniform Commercial Code.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Statutes <KEY>1151.

Westlaw Topic No. 361.

C.J.S. Statutes § 401.

§ 1–108. Relation to electronic signatures in global and National Commerce Act

Relation to Electronic Signatures in Global and National Commerce Act

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this article modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

History

Source. LA 26–03, eff. October 2, 2003.

United States Code

General rule of validity, see 15 U.S.C. § 7001 et seq.

Library References

Contracts <KEY>35.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 83 to 89.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 1–201. General definitions

General Definitions

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

(1) **"Action"**, in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) **"Aggrieved party"** means a party entitled to pursue a remedy.

(3) "**Agreement**", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in 80 CNCA § 1–303.

(4) "**Bank**" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "**Bearer**" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "**Bill of lading**" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(7) "**Branch**" includes a separately incorporated foreign branch of a bank.

(8) "**Burden of establishing**" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "**Buyer in ordinary course of business**" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead. is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "**Buyer in ordinary course of business**" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "**Conspicuous**", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "**Consumer**" means an individual who enters into a transaction primarily for personal, family, or household purposes

(12) "**Contract**", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "**Creditor**" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "**Defendant**" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "**Delivery**", with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "**Document of title**" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(17) "**Fault**" means a default, breach, or wrongful act or omission.

(18) "**Fungible goods**" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "**Genuine**" means free of forgery or counterfeiting.

(20) "**Good faith**", except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "**Holder**" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(22) "**Insolvency proceeding**" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "**Insolvent**" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "**Money**" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "**Organization**" means a person other than an individual.

(26) "**Party**", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "**Present value**" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "**Purchase**" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "**Purchaser**" means a person that takes by purchase.

(31) "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "**Remedy**" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "**Representative**" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "**Right**" includes remedy.

(35) **"Security interest"** means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. **"Security interest"** does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under 80 CNCA § 2–401, but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in 80 CNCA § 2–505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under 80 CNCA § 2–401 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to 80 CNCA § 1–203.

(36) **"Send"** in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) **"Signed"** includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) **"State"** means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) **"Surety"** includes a guarantor or other secondary obligor.

(40) **"Term"** means a portion of an agreement that relates to a particular matter.

(41) **"Unauthorized signature"** means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) **"Warehouse receipt"** means a receipt issued by a person engaged in the business of storing goods for hire.

(43) **"Writing"** includes printing, typewriting, or any other intentional reduction to tangible form. **"Written"** has a corresponding meaning.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Statutes <KEY>1122.

Westlaw Topic No. 361.

C.J.S. Statutes §§ 364, 372 to 374.

§ 1–202. Notice, knowledge

Notice—Knowledge

(a) Subject to subsection (f), a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "**Knowledge**" means actual knowledge. "**Knows**" has a corresponding meaning.

(c) "**Discover**", "**learn**", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "**notifies**" or "**gives**" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person "**receives**" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention

if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Notice <KEY>1 to 12.

Westlaw Topic No. 277.

C.J.S. Notice §§ 1 to 29.

§ 1–203. Lease distinguished from security interest

Lease Distinguished From Security Interest

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to

possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "**remaining economic life of the goods**" and "**reasonably predictable**" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Secured Transactions <KEY>10.

Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 2, 6, 20 to 27.

§ 1–204. Value

Value

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Contracts <KEY>49.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 106 to 108, 110 to 111.

§ 1–205. Reasonable time—Seasonableness

Reasonable Time—Seasonableness

- (a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.
- (b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Course of performance or practical construction, see 80 CNCA § 2–208.

Final written expression: Parol or extrinsic evidence, see 80 CNCA § 2–202.

Library References

Contracts <KEY>212.

Westlaw Topic No. 95.

C.J.S. Contracts § 788.

§ 1–206. Presumptions

Presumptions

Whenever the Uniform Commercial Code creates a "**presumption**" with respect to a fact, or provides that a fact is "**presumed**", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

History

Source. LA 26–03, eff. October 2, 2003.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

§ 1–301. Territorial applicability—Parties' power to choose applicable law

Territorial Applicability—Parties' Power to Choose Applicable Law

(a) In this section:

(1) "**Domestic transaction**" means a transaction other than an international transaction.

(2) "**International transaction**" means a transaction that bears a reasonable relation to a country other than the United States.

(b) This section applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(c) Except as otherwise provided in this section:

(1) an agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this Nation or of another state is effective, whether or not the transaction bears a relation to the state designated; and

(2) an agreement by parties to an international transaction that any or all of their rights and obligations are to be determined by the law of this Nation or of another state or country is effective,

whether or not the transaction bears a relation to the state or country designated.

(d) In the absence of an agreement effective under subsection (c), and except as provided in subsections (e) and (g), the rights and obligations of the parties are determined by the law that would be selected by application of this Nation's conflict of laws principles.

(e) If one of the parties to a transaction is a consumer, the following rules apply:

(1) An agreement referred to in subsection (c) is not effective unless the transaction bears a reasonable relation to the state or country designated.

(2) Application of the law of the state or country determined pursuant to subsection (c) or (d) may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:

(A) of the state or country in which the consumer principally resides, unless subparagraph (B) applies; or

(B) if the transaction is a sale of goods, of the state or country in which the consumer both makes the contract and takes delivery of those goods, if such state or country is not the state or country in which the consumer principally resides.

(f) An agreement otherwise effective under subsection (c) is not effective to the extent that application of the law of the state or country designated would be contrary to a fundamental policy of the state or country whose law would govern in the absence of agreement under subsection (d).

(g) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) 80 CNCA § 2–402;

(2) 80 CNCA §§ 2A–105 and 2A–106;

(3) 80 CNCA § 4–102;

(4) 80 CNCA § 4A–507;

(5) 80 CNCA § 5–116;

[(6) 80 CNCA § 6–103;]

(7) 80 CNCA § 8–110;

(8) 80 CNCA §§ 9–301 through 9–307.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Action <KEY>17.

Contracts <KEY>129(1), 144, 206.

Westlaw Topic Nos. 13, 95.

C.J.S. Actions §§ 41 to 53.

C.J.S. Conflict of Laws §§ 1 to 35, 37 to 58, 60 to 74, 100 to 102, 105 to 106, 109, 114, 117 to 119.

C.J.S. Contracts §§ 13 to 22, 24, 301 to 302, 311 to 313.

C.J.S. Federal Civil Procedure § 306.

C.J.S. Statutes §§ 604 to 606, 609 to 616.

§ 1–302. Variation by agreement

Variation by Agreement

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Scope, see 80 CNCA § 5–103.

Library References

Contracts <KEY>1, 7, 103, 210.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 1 to 2, 4, 9, 12, 33, 251 to 260, 276 to 277, 347, 481 to 482, 1030, 1033.

§ 1–303. Course of performance, course of dealing, and usage of trade

Course of Performance, Course of Dealing, and Usage of Trade

(a) A **"course of performance"** is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A **"course of dealing"** is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A **"usage of trade"** is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to 80 CNCA § 2–209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

History

Source. LA 26–03, eff. October 2, 2003.

Oklahoma Statutes

Choice of law, see 12A O.S. § 4A–507.

Limitation on power of parties to consumer lease to choose applicable law and judicial forum, see 12A O.S. § 2A–106.

Territorial application of article to goods covered by certificate of title, see 12A O.S. § 2A–105.

Library References

Contracts <KEY>170.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 426 to 428.

§ 1–304. Obligation of good faith

Obligation of Good Faith

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Contracts <KEY>168.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 435 to 438.

§ 1–305. Remedies to be liberally administered

Remedies to be Liberally Administered

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Action <KEY>3, 34.

Indians <KEY>535, 536.

Westlaw Topic Nos. 13, 209.

C.J.S. Actions §§ 30, 56 to 57, 62 to 64, 67.

C.J.S. Indians §§ 151 to 179.

C.J.S. Summary Proceedings § 2.

§ 1–306. Waiver or renunciation of claim or right after breach

Waiver or Renunciation of Claim or Right After Breach

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Contracts <KEY>316.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 739 to 746, 748 to 751, 820.

§ 1–307. Prima facie evidence by third-party documents

Prima Facie Evidence by Third-Party Documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1–308. Performance or acceptance under reservation of rights

Performance or Acceptance Under Reservation of Rights

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Accord and Satisfaction <KEY>11(2).

Contracts <KEY>305, 316.

Estoppel <KEY>90.

Westlaw Topic Nos. 8, 95, 156.

C.J.S. Accord and Satisfaction §§ 32, 51 to 60.

C.J.S. Contracts §§ 739 to 751, 796 to 799, 816 to 820.

C.J.S. Estoppel and Waiver §§ 88 to 89, 175 to 180.

§ 1–309. Option to accelerate at will

Option to Accelerate at Will

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>129(3).

Contracts <KEY>213, 214.

Secured Transactions <KEY>221.

Westlaw Topic Nos. 56, 95, 349A.

C.J.S. Bills and Notes; Letters of Credit §§ 117 to 131, 133 to 138.

C.J.S. Contracts §§ 790 to 792.

C.J.S. Secured Transactions §§ 179, 181 to 183, 190.

§ 1–310. Subordinated obligations

Subordinated Obligations

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Secured Transactions <KEY>147.

Westlaw Topic No. 349A.

C.J.S. Secured Transactions § 116.

ARTICLE 2 SALES

Oklahoma Statutes

Commercial code, sales, see 12A O.S. § 2–101 et seq.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 2–101. Short title

Short Title

This Article shall be known and may be cited as Uniform Commercial Code—Sales.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Statutes <KEY>1624(19).

Westlaw Topic No. 361.

C.J.S. Statutes §§ 285, 287.

§ 2–102. Scope; certain security and other transactions excluded from this article

Scope—Certain Security and Other Transactions Excluded From This Article

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>3.

Westlaw Topic No. 343.

C.J.S. Agency §§ 15 to 16.

C.J.S. Bailments §§ 9 to 12.

C.J.S. Sales §§ 6 to 9, 12 to 14.

§ 2–103. Definitions and index of definitions

Definitions and Index of Definitions

(1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance". Section 2–606.

"Banker's credit". Section 2–325.

"Between merchants". Section 2–104.

"Cancellation". Section 2–106(4).

"Commercial unit". Section 2–105.

"Confirmed credit". Section 2–325.

"Conforming to contract". Section 2–106.

"Contract for sale". Section 2–106.

"Cover". Section 2–712.

"Entrusting". Section 2–403.

"Financing agency". Section 2–104.

"Future goods". Section 2–105.

"Goods". Section 2–105.

"Identification". Section 2–501.

"Installment contract". Section 2–612.

"Letter of Credit". Section 2–325.

"Lot". Section 2–105.

"Merchant". Section 2–104.

"Overseas". Section 2–323.

"Person in position of seller". Section 2–707.

"Present sale". Section 2–106.

"Sale". Section 2–106.

"Sale on approval". Section 2–326.

"Sale or return". Section 2–326.

"Termination". Section 2–106.

(3) The following definitions in other Articles apply to this Article:

"Check". Section 3–104.

"Consignee". Section 7–102.

"Consignor". Section 7–102.

"Consumer goods". Section 9–109.

"Dishonor". Section 3–502.

"Draft". Section 3–104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>1, 54.

Westlaw Topic No. 343.

C.J.S. Sales §§ 1 to 2, 26 to 27, 35, 38 to 39, 76, 115 to 117, 130 to 145, 149 to 152, 259.

§ 2–104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

Definitions: "Merchant"—"Between Merchants"—"Financing Agency"

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2–707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Library References

Sales <KEY>1, 15.1.

Westlaw Topic No. 343.

C.J.S. Sales §§ 1 to 2, 5, 26 to 28, 35, 38 to 39, 76, 115 to 117, 259.

§ 2–105. Definitions: "Transferability"; "Goods"; "Future" goods; "Lot"; "Commercial unit"

Definitions: "Transferability"—"Goods"—"Future Goods"—"Lot"—"Commercial Unit"

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2–107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for

purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>9.

Westlaw Topic No. 343.

C.J.S. Sales §§ 3 to 4, 11 to 12, 15 to 17, 29 to 30.

§ 2–106. Definitions: "Contract"; "Agreement"; "Contract for sales"; "Sale"; "Present sale"; "Conforming" to contract; "Termination"; "Cancellation"

Definitions: "Contract"—"Agreement"—"Contract for Sales"—"Sale"—"Present Sale"—"Conforming" to Contract—"Termination"—"Cancellation"

(1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2–401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Warehouse receipts, bills of lading and other documents of title, definitions and index of definitions, see 80 CNCA § 7–102.

Secured transactions, short title and general conceptions, definitions and index of definitions, see 80 CNCA § 9–102.

Library References

Sales <KEY>3, 84.

Westlaw Topic No. 343.

C.J.S. Agency §§ 15 to 16.

C.J.S. Bailments §§ 9 to 12.

C.J.S. Sales §§ 6 to 9, 12 to 14, 145, 182 to 184.

§ 2–107. Goods to be severed from realty: Recording

Goods to be Severed From Realty—Recording

(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>10, 11.

Westlaw Topic No. 343.

C.J.S. Sales §§ 3 to 4, 11 to 12, 15 to 17, 29.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

§ 2–201. Formal requirements; statute of frauds

Formal Requirements—Statute of Frauds

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2–606).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Sale on approval and sale or return—Consignment sales and rights of creditors, see 80 CNCA § 2–326.

Library References

Frauds, Statute Of <KEY>81 to 96.

Westlaw Topic No. 185.

C.J.S. Sales §§ 106 to 108, 111.

§ 2–202. Final written expression: parol or extrinsic evidence

Final Written Expression—Parol or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (Section 1–205) or by course of performance (Section 2–208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Exclusion or modification of warranties, see 80 CNCA § 2–316.

Sale on approval and sale or return—Consignment sales and rights of creditors, see 80 CNCA § 2–326.

Library References

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 2–203. Seals inoperative

Seals Inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>28.

Seals <KEY>1.

Westlaw Topic Nos. 343, 347.

C.J.S. Sales §§ 106 to 108, 112 to 114.

C.J.S. Seals §§ 1 to 2.

§ 2–204. Formation in general

Formation in General

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>1, 22, 23.

Westlaw Topic No. 343.

C.J.S. Sales §§ 1 to 2, 26 to 27, 35, 38 to 39, 42 to 65, 69, 76, 115 to 117, 259.

§ 2–205. Firm offers

Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>22(2), 22(5), 23(2), 23(5).

Westlaw Topic No. 343.

C.J.S. Sales §§ 46 to 49, 53, 61, 63, 69.

§ 2–206. Offer and acceptance in formation of contract

Offer and Acceptance in Formation of Contract

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>22, 23.

Westlaw Topic No. 343.

C.J.S. Sales §§ 42 to 65, 69.

§ 2–207. Additional terms in acceptance or confirmation

Additional Terms in Acceptance or Confirmation

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer,

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>22(4), 23(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 59 to 65, 69.

§ 2–208. Course of performance or practical construction

Course of Performance or Practical Construction

- (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.
- (2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1–205).
- (3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History

Source. LA 26–03, eff. October 2, 2003.

§ 2–209. Modification, rescission and waiver

Modification, Rescission and Waiver

- (1) An agreement modifying a contract within this Article needs no consideration to be binding.
- (2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
- (3) The requirements of the statute of frauds section of this Article (Section 2–201) must be satisfied if the contract as modified is within its provisions.
- (4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.
- (5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Course of performance, course of dealing, and usage of trade, see 80 CNCA § 1–303.

Library References

Frauds, Statute Of <KEY>131(1).

Sales <KEY>89, 101, 121.

Westlaw Topic Nos. 185, 343.

C.J.S. Frauds, Statute Of §§ 181 to 183.

C.J.S. Sales §§ 162 to 174, 179, 204 to 208.

§ 2–210. Delegation of performance; assignment of rights

Delegation of Performance—Assignment of Rights

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2–609).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>86, 220.

Westlaw Topic No. 343.

C.J.S. Sales §§ 139 to 140, 409.

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2–301. General obligations of parties

General Obligation of Parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>150, 177, 183.

Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 259 to 260, 279 to 282, 324 to 325, 327 to 328, 344 to 347, 349 to 351, 368, 371.

§ 2–302. Unconscionable contract or clause

Unconscionable Contract or Clause

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>1(1).

Specific Performance <KEY>51.

Westlaw Topic Nos. 343, 358.

C.J.S. Sales §§ 1 to 2, 26 to 27, 38 to 39, 76.

C.J.S. Specific Performance § 36.

§ 2–303. Allocation or division of risks

Allocation or Division of Risks

Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>217.

Westlaw Topic No. 343.

§ 2–304. Price payable in money, goods, realty, or otherwise

Price Payable in Money, Goods, Realty, or Otherwise

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>189.

Westlaw Topic No. 343.

C.J.S. Sales §§ 370 to 371.

§ 2–305. Open price term

Open Price Term

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>1(3), 74.

Westlaw Topic No. 343.

C.J.S. Sales §§ 35, 153 to 156.

§ 2–306. Output, requirements and exclusive dealings

Output, Requirements and Exclusive Dealings

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>71(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 303 to 307.

§ 2–307. Delivery in single lot or several lots

Delivery in Single Lot or Several Lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>163.

Westlaw Topic No. 343.

C.J.S. Sales § 298.

§ 2–308. Absence of specified place for delivery

Absence of Specified Place for Delivery

Unless otherwise agreed

- (a) the place for delivery of goods is the seller's place of business or if he has none his residence; but
- (b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery, and
- (c) documents of title may be delivered through customary banking channels.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>79.

Westlaw Topic No. 343.

C.J.S. Sales §§ 279 to 280.

§ 2–309. Absence of specific time provision; notice of termination

Absence of Specific Time Provisions—Notice of Termination

- (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.
- (2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
- (3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>81(2), 84, 107, 127.

Westlaw Topic No. 343.

C.J.S. Sales §§ 145, 182 to 184, 223 to 225, 284 to 285, 359 to 360.

§ 2–310. Open time for payment or running of credit; authority to ship under reservation

Open Time for Payment or Running of Credit—Authority to Ship Under Reservation

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery, and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2–513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>82.

Westlaw Topic No. 343.

C.J.S. Sales § 369.

§ 2–311. Options and cooperation respecting performance

Options and Cooperation Respecting Performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2–204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within

limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2–319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Formation in general, see 80 CNCA § 2–204.

Library References

Sales <KEY>1(4), 64, 83, 154.

Westlaw Topic No. 343.

C.J.S. Sales §§ 115 to 117, 130, 259.

§ 2–312. Warranty of title and against infringement; buyer's obligation against infringement

Warranty of Title and Against Infringement—Buyer's Obligation Against Infringement

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Effect of acceptance—Notice of breach—Burden of establishing breach after acceptance—Notice of claim or litigation to person answerable over, see 80 CNCA § 2–607.

Library References

Sales <KEY>263.

Westlaw Topic No. 343.

C.J.S. Sales §§ 457, 472.

§ 2–313. Express warranties by affirmation, promise, description, sample

Express Warranties by Affirmation, Promise, Description, Sample

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>259.

Westlaw Topic No. 343.

C.J.S. Sales §§ 430 to 437, 464.

§ 2–314. Implied warranty: merchantability; usage of trade

Implied Warranty: Merchantability—Usage of Trade

(1) Unless excluded or modified (Section 2–316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2–316) other implied warranties may arise from course of dealing or usage of trade.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>272.

Westlaw Topic No. 343.

C.J.S. Sales §§ 444 to 450.

§ 2–315. Implied warranty: Fitness for particular purpose

Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>273.

Westlaw Topic No. 343.

C.J.S. Sales §§ 453 to 456.

§ 2–316. Exclusion or modification of warranties

Exclusion or Modification of Warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2–202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or

model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (Sections 2–718 and 2–719).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>260, 267.

Westlaw Topic No. 343.

C.J.S. Sales §§ 424, 430, 435 to 437, 459 to 469.

§ 2–317. Cumulation and conflict of warranties express or implied

Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>277.

Westlaw Topic No. 343.

C.J.S. Sales §§ 424, 427 to 429, 438 to 439.

§ 2–318. Third party beneficiaries of warranties express or implied

Third Party Beneficiaries of Warranties Express or Implied

Note: *If this Act is introduced in the Congress of the United States this section should be omitted. (States to select one alternative.)*

Alternative A

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative B

A seller's warranty whether express or implied extends to any natural person who may reasonably be expected to use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

Alternative C

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>187.

Westlaw Topic No. 343.

§ 2–319. F.O.B. and F.A.S. terms

F.O.B. and F.A.S. Terms

(1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even

though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (Section 2–504) and bear the expense and risk of putting them into the possession of the carrier, or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (Section 2–503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (Section 2–323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (Section 2–311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>77, 79, 83, 161, 201(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 155 to 156, 259, 275, 279 to 280, 288, 290 to 291, 404.

§ 2-320. C.I.F. and C. & F. terms

C.I.F. and C. & F. Terms

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for, and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Sales <KEY>77(2).

Westlaw Topic No. 343.

C.J.S. Sales §§ 155 to 156.

§ 2–321. C.I.F. or C. & F.: "Net landed weights"; "Payment on arrival"; Warranty of condition on arrival

C.I.F. or C. & F.: "Net Landed Weights"; "Payment On Arrival"; Warranty of Condition On Arrival

Under a contract containing a term C.I.F. or C. & F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Buyer's right to inspection of goods, see 80 CNCA § 2–513.

Library References

Sales <KEY>168, 183, 201(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 316 to 317, 319 to 322, 344 to 347, 349 to 351, 368, 371, 404.

§ 2–322. Delivery "Ex-ship"

Delivery "Ex-Ship"

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Sales <KEY>77(2), 83, 161, 201(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 155 to 156, 259, 275, 288, 290 to 291, 404.

§ 2-323. Form of bill of lading required in overseas shipment; "Overseas"

Form of Bill of Lading Required in Overseas Shipment; "Overseas"

(1) Where the contract contemplates overseas shipment and contains a term C.I.F or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded in board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set, otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of Section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which

the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Manner of seller's tender of delivery, see 80 CNCA § 2–503.

Library References

Sales <KEY>161, 162, 201(4).

Westlaw Topic No. 343.

C.J.S. Sales §§ 275, 288 to 291, 404.

§ 2–324. "No arrival, no sale" term

"No Arrival, No Sale" Term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2–613).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>150, 197, 217, 224.

Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 259 to 260, 279 to 282, 382 to 383, 385 to 387, 393, 396, 403 to 404.

§ 2–325. "Letter of credit" term; "Confirmed credit"

"Letter of Credit" Term—"Confirmed Credit"

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Library References

Banks and Banking <KEY>191.

Sales <KEY>191.

Westlaw Topic Nos. 52, 343.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

C.J.S. Sales § 370.

§ 2–326. Sale on approval and sale or return; consignment sales and rights of creditors

Sale on Approval and Sale or Return—Consignment Sales and Rights of Creditors

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (Section 2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (Section 2-202).

History

Source. LA 26-03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2-103.

Library References

Sales <KEY>168.5, 204 to 206, 222.

Westlaw Topic No. 343.

C.J.S. Sales §§ 278, 390 to 392, 395, 406.

§ 2–327. Special incidents of sale on approval and sale or return

Special Incidents of Sale on Approval and Sale or Return

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Risk of loss in the absence of breach, see 80 CNCA § 2–509.

Library References

Sales <KEY>168.5, 204, 205.

Westlaw Topic No. 343.

C.J.S. Sales §§ 278, 390 to 391, 406.

§ 2–328. Sale by auction

Sale by Auction

- (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- (2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- (3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
- (4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Accountants <KEY>7, 8.

Westlaw Topic No. 11A.

C.J.S. Accountants §§ 13 to 16.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 2–401. Passing of title; reservation for security; limited application of this section

Passing of Title—Reservation for Security—Limited Application of This Section

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

- (1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2–501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a

security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

General definitions, see 80 CNCA § 1–201.

Scope, see 80 CNCA § 9–109.

Security interest perfected upon attachment, see 80 CNCA § 9–309.

Security interests arising under Article 2 or 2A, see 80 CNCA § 9–110.

Use of singular and plural—Gender, see 80 CNCA § 1–106.

Library References

Sales <KEY>197 to 218.5.

Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 388, 390 to 394, 397 to 400, 403 to 406.

§ 2–402. Rights of seller's creditors against sold goods

Rights of Seller's Creditors Against Sold Goods

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (Sections 2–502 and 2–716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or avoidable preference.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Rights acquired in absence of due negotiation—Effect of diversion—Stoppage of delivery, see 80 CNCA § 7–504.

Territorial applicability—Parties' power to choose applicable law, see 80 CNCA § 1–301.

Library References

Fraudulent Conveyances <KEY>139.

Westlaw Topic No. 186.

§ 2–403. Power to transfer; good faith purchase of goods; "entrusting"

Power to Transfer—Good Faith Purchase of Goods—"Entrusting"

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9) and Documents of Title (Article 7).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Document of title to goods defeated in certain cases, see 80 CNCA § 7–503.

Lien of warehouse, see 80 CNCA § 7–209.

Secured party's rights on disposition of collateral and in proceeds, see 80 CNCA § 9–315.

Seller's remedies on discovery of buyer's insolvency, see 80 CNCA § 2–702.

Library References

Estoppel <KEY>75.

Sales <KEY>234.

Westlaw Topic Nos. 156, 343.

C.J.S. Estoppel and Waiver §§ 141, 143 to 145, 202.

C.J.S. Sales §§ 411 to 417, 419.

PART 5. PERFORMANCE

§ 2–501. Insurable interest in goods; manner of identification of goods

Insurable Interest in Goods; Manner of Identification of Goods

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Passing of title—Reservation for security—Limited application of this section, see 80 CNCA § 2–401.

Library References

Insurance <KEY>1779, 1790.

Sales <KEY>208.

Westlaw Topic Nos. 217, 343.

C.J.S. Insurance §§ 317 to 321, 324 to 346, 379 to 386.

C.J.S. Sales §§ 397 to 400.

§ 2–502. Buyer's right to goods on seller's insolvency

Buyer's Right to Goods on Seller's Insolvency

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Buyer's damages for breach in regard to accepted goods, see 80 CNCA § 2–714.

Rights of seller's creditors against sold goods, see 80 CNCA § 2–402.

Library References

Sales <KEY>399.

Westlaw Topic No. 343.

C.J.S. Sales §§ 586, 594.

§ 2–503. Manner of seller's tender of delivery

Manner of Seller's Tender of Delivery

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with

respect to bills of lading in a set (subsection (2) of Section 2–323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

F.O.B. and F.A.S. terms, see 80 CNCA § 2–319.

Library References

Sales <KEY>153.

Westlaw Topic No. 343.

C.J.S. Sales §§ 263 to 275, 308 to 311.

§ 2–504. Shipment by seller

Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

F.O.B. and F.A.S. terms, see 80 CNCA § 2–319.

Library References

Sales <KEY>83, 161.

Westlaw Topic No. 343.

C.J.S. Sales §§ 259, 275, 288, 290 to 291.

§ 2–505. Seller's shipment under reservation

Seller's Shipment Under Reservation

(1) Where the seller has identified goods to the contract by or before shipment

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2–507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

General definitions, see 80 CNCA § 1–201.

Scope, see 80 CNCA § 9–109.

Security interest perfected upon attachment, see 80 CNCA § 9–309.

Security interests arising under Article 2 or 2A, see 80 CNCA § 9–110.

Library References

Carriers <KEY>54.1 to 59.

Sales <KEY>300, 316.

Shipping <KEY>106(3).

Westlaw Topic Nos. 70, 343, 354.

C.J.S. Carriers §§ 375 to 378, 384 to 390.

C.J.S. Sales §§ 536 to 538, 540, 549 to 554.

C.J.S. Shipping §§ 276, 279 to 284.

§ 2–506. Rights of financing agency

Rights of Financing Agency

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>292, 309.

Westlaw Topic No. 343.

C.J.S. Sales §§ 540, 544.

§ 2–507. Effect of seller's tender; delivery on condition

Effect of Seller's Tender—Delivery on Condition

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>153.

Westlaw Topic No. 343.

C.J.S. Sales §§ 263 to 275, 308 to 311.

§ 2–508. Cure by seller of improper tender or delivery; replacement

Cure by Seller of Improper Tender or Delivery—Replacement

(1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Form of bill of lading required in overseas shipment; "overseas", see 80 CNCA § 2–323.

Library References

Sales <KEY>153, 165, 169.

Westlaw Topic No. 343.

C.J.S. Sales §§ 263 to 275, 293 to 296, 308 to 311.

§ 2–509. Risk of loss in the absence of breach

Risk of Loss in the Absence of Breach

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2–505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of Section 2–503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (Section 2–327) and on effect of breach on risk of loss (Section 2–510).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>197, 201(4), 217, 224, 232.

Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 383, 385 to 387, 393, 396, 403 to 404.

§ 2–510. Effect of breach on risk of loss

Effect of Breach on Risk of Loss

- (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
- (2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
- (3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>197, 217, 224, 232.

Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 383, 385 to 387, 393, 396, 403 to 404.

§ 2–511. Tender of payment by buyer; payment by check

Tender of Payment by Buyer—Payment by Check

- (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
- (2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
- (3) Subject to the provisions of this Act on the effect of an instrument on an obligation (Section 3–310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>185, 191.

Westlaw Topic No. 343.

C.J.S. Sales § 370.

§ 2–512. Payment by buyer before inspection

Payment by Buyer before Inspection

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under this Act (Section 5–109(b)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>195.

Westlaw Topic No. 343.

C.J.S. Sales §§ 372, 375, 377 to 381.

§ 2–513. Buyer's right to inspection of goods

Buyer's Right to Inspection of Goods

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of Section 2–321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Open time for payment or running of credit—Authority to ship under reservation, see 80 CNCA § 2–310.

Library References

Sales <KEY>168(1) to 168(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 316 to 317, 319 to 322, 344 to 347, 349 to 351.

§ 2–514. When documents deliverable on acceptance; when on payment

When Documents Deliverable on Acceptance—When on Payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>146, 191, 202.

Westlaw Topic No. 343.

C.J.S. Sales §§ 370, 403 to 404.

PART 6. BREACH, REPUDIATION AND EXCUSE

§ 2–601. Buyer's rights on improper delivery

Buyer's Rights on Improper Delivery

Subject to the provisions of this Article on breach in installment contracts (Section 2–612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2–718 and 2–719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>177, 180.

Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 260, 324 to 325, 327 to 328, 336 to 337, 344 to 347, 349 to 351.

§ 2–602. Manner and effect of rightful rejection

Manner and Effect of Rightful Rejection

- (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.
- (2) Subject to the provisions of the two following sections on rejected goods (Sections 2–603 and 2–604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller, and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2–711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on Seller's remedies in general (Section 2–703).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>177, 179(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 324 to 325, 327 to 328, 338 to 351.

§ 2–603. Merchant buyer's duties as to rightfully rejected goods

Merchant Buyer's Duties as to Rightfully Rejected Goods

(1) Subject to any security interest in the buyer (subsection (3) of Section 2–711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission men to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>179(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 338 to 351.

§ 2–604. Buyer's options as to salvage of rightfully rejected goods

Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>179(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 338 to 351.

§ 2–605. Waiver of buyer's objections by failure to particularize

Waiver of Buyer's Objections by Failure to Particularize

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>176, 179(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 261, 286, 297, 302, 316, 323, 338 to 351.

§ 2–606. What constitutes acceptance of goods

What Constitutes Acceptance of Goods

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of Section 2–602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Formal requirements; statute of frauds, see 80 CNCA § 2–201.

Library References

Sales <KEY>178.

Westlaw Topic No. 343.

C.J.S. Sales §§ 326, 329 to 334.

§ 2–607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

Effect of Acceptance—Notice of Breach—Burden of Establishing Breach after Acceptance—
Notice of Claim or Litigation to Person Answerable Over

- (1) The buyer must pay at the contract rate for any goods accepted.
- (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.
- (3) Where a tender has been accepted
 - (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
 - (b) if the claim is one for infringement or the like (subsection (3) of Section 2–312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
- (4) The burden is on the buyer to establish any breach with respect to the goods accepted
- (5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over
 - (a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound
 - (b) if the claim is one for infringement or the like (subsection (3) of Section 2–312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.
- (6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of Section 2–312).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Buyer's damages for breach in regard to accepted goods, see 80 CNCA § 2–714.

Library References

Indemnity <KEY>40, 79.

Sales <KEY>179, 285.

Westlaw Topic Nos. 208, 343.

C.J.S. Indemnity §§ 29, 48.

C.J.S. Sales §§ 335, 338 to 351, 473 to 477.

§ 2–608. Revocation of acceptance in whole or in part

Revocation of Acceptance in Whole or in Part

(1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>112, 168(2) to 168(4), 168.5, 179(6).

Westlaw Topic No. 343.

C.J.S. Sales §§ 186 to 194, 199 to 202, 206 to 208, 278, 317, 319 to 320, 338 to 357.

§ 2–609. Right to adequate assurance of performance

Right to Adequate Assurance of Performance

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Delegation of performance; assignment of rights, see 80 CNCA § 2–210.

Library References

Sales <KEY>152, 184.

Westlaw Topic No. 343.

C.J.S. Sales §§ 246 to 253, 274, 338 to 343.

§ 2–610. Anticipatory repudiation

Anticipatory Repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party; or
- (b) resort to any remedy for breach (Section 2–703 or Section 2–711), even though he has notified the repudiating party that he would await the tatter's performance and has urged retraction; and
- (c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2–704).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Action for the price, see 80 CNCA § 2–709.

Library References

Sales <KEY>151, 194.

Westlaw Topic No. 343.

C.J.S. Sales §§ 254 to 258.

§ 2–611. Retraction of anticipatory repudiation

Retraction of Anticipatory Repudiation

- (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.
- (2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section 2–609).
- (3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>151, 194.

Westlaw Topic No. 343.

C.J.S. Sales §§ 254 to 258.

§ 2–612. "Installment contract"; breach

"Installment Contract"—Breach

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Seller's remedies in general, see 80 CNCA § 2–703.

Library References

Sales <KEY>82(4), 163, 180.

Westlaw Topic No. 343.

C.J.S. Sales §§ 260, 298, 336 to 337.

§ 2–613. Casualty to identified goods

Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2–324) then

- (a) if the loss is total the contract is avoided; and
- (b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>150(2), 172, 217.

Westlaw Topic No. 343.

C.J.S. Sales §§ 375 to 378, 380 to 381.

§ 2–614. Substituted performance

Substituted Performance

- (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.
- (2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>83, 190.

Westlaw Topic No. 343.

C.J.S. Sales §§ 259, 371.

§ 2–615. Excuse by failure of presupposed conditions

Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>85(2), 173.

Westlaw Topic No. 343.

C.J.S. Sales §§ 375, 379.

§ 2–616. Procedure on notice claiming excuse

Procedure on Notice Claiming Excuse

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (Section 2–612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>89, 116.

Westlaw Topic No. 343.

C.J.S. Sales §§ 162 to 174, 179, 186 to 189, 193 to 194, 199 to 202, 352 to 353, 355 to 357.

PART 7. REMEDIES

§ 2–701. Remedies for breach of collateral contracts not impaired

Remedies for Breach of Collateral Contracts Not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>309, 404, 425.

Westlaw Topic No. 343.

C.J.S. Sales §§ 423, 480 to 482, 486 to 488, 540, 586 to 588, 600.

§ 2–702. Seller's remedies on discovery of buyer's insolvency

Seller's Remedies on Discovery of Buyer's Insolvency

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (Section 2–705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (Section 2–403). Successful reclamation of goods excludes all other remedies with respect to them.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>291, 316(1).

Westlaw Topic No. 343.

C.J.S. Sales §§ 536 to 538, 549 to 554.

§ 2–703. Seller's remedies in general

Seller's Remedies in General

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2–612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

- (b) stop delivery by any bailee as hereafter provided (Section 2–705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (Section 2–706);
- (e) recover damages for non-acceptance (Section 2–708) or in a proper case the price (Section 2–709);
- (f) cancel.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Anticipatory repudiation, see 80 CNCA § 2–610.

Manner and effect of rightful rejection, see 80 CNCA § 2–602.

Library References

Indians <KEY>535.

Sales <KEY>289, 300, 316(1), 332, 340.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 536 to 538, 540, 543, 549 to 555, 559.

§ 2–704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular

contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Anticipatory repudiation, see 80 CNCA § 2–610.

Library References

Sales <KEY>332.

Westlaw Topic No. 343.

C.J.S. Sales § 555.

§ 2–705. Seller's stoppage of delivery in transit or otherwise

Seller's Stoppage of Delivery in Transit or Otherwise

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2–702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer, or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Obligation of warehouse or carrier to deliver—Excuse, see 80 CNCA § 7–403.

Rights acquired in absence of due negotiation—Effect of diversion—Stoppage of delivery, see 80 CNCA § 7–504.

Library References

Sales <KEY>289.

Westlaw Topic No. 343.

C.J.S. Sales §§ 536 to 538, 543.

§ 2–706. Seller's resale including contract for resale

Seller's Resale Including Contract for Resale

(1) Under the conditions stated in Section 2–703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2–710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Sales <KEY>332.

Westlaw Topic No. 343.

C.J.S. Sales § 555.

§ 2-707. "Person in the position of a seller"

"Person in the Position of a Seller"

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (Section 2–705) and resell (Section 2–706) and recover incidental damages (Section 2–710).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Definitions: "contract"; "agreement"; "contract for sales"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation", see 80 CNCA § 2–106.

Library References

Sales <KEY>292, 332, 370.

Westlaw Topic No. 343.

C.J.S. Sales §§ 544, 555, 574 to 575.

§ 2–708. Seller's damages for non-acceptance or repudiation

Seller's Damages for Non-Acceptance or Repudiation

(1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (Section 2–723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2–710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2–710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>384.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 574, 576 to 577.

§ 2-709. Action for the price

Action for the Price

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer, and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Sales <KEY>340.

Westlaw Topic No. 343.

C.J.S. Sales §§ 536 to 538, 559.

§ 2-710. Seller's incidental damages

Seller's Incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyers breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>384(1).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 574, 576 to 577.

§ 2–711. Buyer's remedies in general—Buyer's security interest in rejected goods

Buyer's Remedies in General—Buyer's Security Interest in Rejected Goods

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2–612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (Section 2–713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (Section 2–502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (Section 2–716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in

goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2–706).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Anticipatory repudiation, see 80 CNCA § 2–610.

Buyer's remedies in general—Buyer's security interest in rejected goods, see 80 CNCA § 2–711.

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Manner and effect of rightful rejection, see 80 CNCA § 2–602.

Merchant buyer's duties as to rightfully rejected goods, see 80 CNCA § 2–603.

Priority of security interests in transferred collateral, see 80 CNCA § 9–325.

Scope, see 80 CNCA § 9–109.

Security interest perfected upon attachment, see 80 CNCA § 9–309.

Security interests arising under Article 2 or 2A, see 80 CNCA § 9–110.

Library References

Sales <KEY>113, 390, 399, 404, 425.

Westlaw Topic No. 343.

C.J.S. Sales §§ 186 to 188, 192 to 194, 201 to 202, 352 to 353, 355 to 357, 423, 480 to 482, 486 to 488, 586 to 588, 591, 594, 600.

§ 2–712. "Cover"; buyer's procurement of substitute goods

"Cover"—Buyer's Procurement of Substitute Goods

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and

the contract price together with any incidental or consequential damages as hereinafter defined (Section 2–715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Arkansas riverbed trust fund management, definitions, see 79 CNCA § 103.

Library References

Indians <KEY>535.

Sales <KEY>418(7).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 596 to 598, 608.

§ 2–713. Buyer's damages for non-delivery or repudiation

Buyer's Damages for Non-Delivery or Repudiation

(1) Subject to the provisions of this Article with respect to proof of market price (Section 2–723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2–715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>418(1) to 418(19).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

§ 2–714. Buyer's damages for breach in regard to accepted goods

Buyer's Damages for Breach in Regard to Accepted Goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2–607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>418(1) to 418(19).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

§ 2–715. Buyer's incidental and consequential damages

Buyer's Incidental and Consequential Damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and

any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>418(1) to 418(19).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

§ 2–716. Buyer's right to specific performance or replevin

Buyer's Right to Specific Performance or Replevin

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Rights of seller's creditors against sold goods, see 80 CNCA § 2–402.

Library References

Sales <KEY>399.

Specific Performance <KEY>67.

Westlaw Topic Nos. 343, 358.

C.J.S. Sales §§ 585 to 586, 594.

C.J.S. Specific Performance §§ 58 to 62.

§ 2–717. Deduction of damages from the price

Deduction of Damages from the Price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>188, 348(0.5).

Westlaw Topic No. 343.

C.J.S. Sales §§ 374, 562.

§ 2–718. Liquidation or limitation of damages; deposits

Liquidation or Limitation of Damages—Deposits

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (Section 2-706).

History

Source. LA 26-03, eff. October 2, 2003.

Cross References

Buyer's rights on improper delivery, see 80 CNCA § 2-601.

Exclusion or modification of warranties, see 80 CNCA § 2-316.

Library References

Indians <KEY>535.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 2-719. Contractual modification or limitation of remedy

Contractual Modification or Limitation of Remedy

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in

this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Buyer's rights on improper delivery, see 80 CNCA § 2–601.

Exclusion or modification of warranties, see 80 CNCA § 2–316.

Library References

Indians <KEY>535.

Sales <KEY>418(6), 426.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 483 to 485, 588, 607.

§ 2–720. Effect of "cancellation" or "rescission" on claims for antecedent breach

Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>111, 131, 370, 405.

Westlaw Topic No. 343.

C.J.S. Sales §§ 191, 231 to 234, 361 to 362, 574 to 575, 600.

§ 2–721. Remedies for fraud

Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Fraud <KEY>31, 32.

Sales <KEY>38(1).

Westlaw Topic Nos. 184, 343.

C.J.S. Fraud §§ 16, 109 to 113.

C.J.S. Sales §§ 78 to 79, 81.

§ 2–722. Who can sue third parties for injury to goods

Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of

loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Sales <KEY>224, 232.

Westlaw Topic No. 343.

C.J.S. Sales § 396.

§ 2–723. Proof of market price: Time and place

Proof of Market Price: Time and Place

(1) If an action based on anticipatory repudiation comes to trial before the time, for performance with respect to some or all of the goods, any damages based on market price (Section 2–708 or Section 2–713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>535.

Sales <KEY>232, 384(2), 418(2).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 396, 574, 601 to 603.

§ 2-724. Admissibility of market quotations

Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Indians <KEY>520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 2-725. Statute of limitations in contracts for sale

Statute of Limitations in Contracts for Sale

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act becomes effective.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Indians <KEY>508.

Sales <KEY>350, 394, 409, 431.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 151 to 179.

C.J.S. Sales §§ 493 to 494, 539, 589.

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Oklahoma Statutes

Commercial code, negotiable instruments, see 12A O.S. § 3–101 et seq.

PART 1. GENERAL PROVISIONS AND DEFINITIONS

§ 3–101. Short title

Short Title

This Article may be cited as Uniform Commercial Code—Negotiable Instruments.

History

Source. LA 26–03, eff. October 2, 2003.

§ 3–102. Subject matter

Subject Matter

- (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.
- (b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.
- (c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

History

Source. LA 26–03, eff. October 2, 2003.

§ 3–103. Definitions

Definitions

(a) In this Article:

- (1) "Acceptor" means a drawee who has accepted a draft.
- (2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.
- (3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.
- (4) "Drawee" means a person ordered in a draft to make payment.
- (5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment
- (6) ["Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.]
- (7) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (8) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (9) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for

processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage, not disapproved by this Article or Article 4.

(10) "Party" means a party to an instrument.

(11) "Principal obligor." with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.

(12) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(13) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1–201(8)).

(14) ["Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.]

(15) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(16) "Remotely-created consumer item" means an item drawn on a consumer account which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(17) "Secondary obligor." with respect to an instrument means (a) an indorser or an accommodation party, (b) a drawer having the obligation described in Section 3–414(d), or (c) any other party to the instrument that has recourse against another party to the instrument pursuant to Section 3–116(b).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance" Section 3–409

"Accommodated party" Section 3–419

"Accommodation party" Section 3–419

"Account" Section 4–104

"Alteration" Section 3–407

"Anomalous indorsement" Section 3–205

"Blank indorsement" Section 3–205

"Cashier's check" Section 3–104

"Certificate of deposit" Section 3–104

"Certified check" Section 3–409

"Check" Section 3–104

"Consideration" Section 3–303

"Draft" Section 3–104

"Holder in due course" Section 3–302

"Incomplete instrument" Section 3–115

"Indorsement" Section 3–204

"Indorser" Section 3–204

"Instrument" Section 3–104

"Issue" Section 3–105

"Issuer" Section 3–105

"Negotiable instrument" Section 3–104

"Negotiation" Section 3–201

"Note" Section 3–104

"Payable at a definite time" Section 3–108

"Payable on demand" Section 3–108

"Payable to bearer" Section 3–109

"Payable to order" Section 3–109

"Payment" Section 3–602

"Person entitled to enforce" Section 3–301

"Presentment" Section 3–501

"Reacquisition" Section 3–207

"Special indorsement" Section 3–205

"Teller's check" Section 3–104

"Transfer of instrument" Section 3–203

"Traveler's check" Section 3–104

"Value" Section 3–303

(c) The following definitions in other Articles apply to this Article:

"Banking day" Section 4–104

"Clearing house" Section 4–104

"Collecting bank" Section 4–105

"Depository bank" Section 4–105

"Documentary draft" Section 4–104

"Intermediary bank" Section 4–105

"Item" Section 4–104

"Payor bank" Section 4–105

"Suspend payments" Section 4–104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

§ 3–104. Negotiable instrument

Negotiable Instrument

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder,

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Definitions of types of banks, see 80 CNCA § 4–105.

Negotiable instrument, see 80 CNCA § 3–104.

Library References

Bills and Notes <KEY>144 to 168.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 158 to 169.

§ 3–105. Issue of instrument

Issue of Instrument

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>62.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 47 to 49.

§ 3–106. Unconditional promise or order

Unconditional Promise or Order

(a) Except as provided in this section, for the purposes of Section 3–104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another record, or (iii) that rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3–104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3–104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Holder in due course, see 80 CNCA § 3–302.

Library References

Bills and Notes <KEY>132 to 134, 148, 156 to 168.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 105 to 110, 119, 158 to 162, 164, 166 to 169.

§ 3–107. Instrument payable in foreign money

Instrument Payable in Foreign Money

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>131, 428.

Payment <KEY>12(5).

Westlaw Topic Nos. 56, 294.

C.J.S. Bills and Notes; Letters of Credit §§ 132, 151, 256, 260 to 263.

C.J.S. Payment §§ 15, 17 to 18.

§ 3–108. Payable on demand or at definite time

Payable on Demand or at Definite Time

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed

date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>129(2), 129(3), 155.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 97, 117 to 138, 164 to 165.

§ 3–109. Payable to bearer or to order

Payable to Bearer or to Order

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3–205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3–205(b).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>6, 32, 118, 153.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 13, 26 to 29, 38 to 40, 112 to 116, 159, 258 to 259.

§ 3–110. Identification of person to whom instrument is payable

Identification of Person to Whom Instrument is Payable

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply.

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the

instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Impostors—Fictitious payees, see 80 CNCA § 3–404.

Special indorsement—Blank indorsement—Anomalous indorsement, see 80 CNCA § 3–205.

Library References

Bills and Notes <KEY>6, 32, 118, 153.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 13, 26 to 29, 38 to 40, 112 to 116, 159, 258 to 259.

§ 3–111. Place of payment

Place of Payment

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>10, 38, 128, 154.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 9, 104, 163.

§ 3–112. Interest

Interest

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>125, 530.

Indians <KEY>533.

Interest <KEY>15, 32, 39, 44.

Westlaw Topic Nos. 56, 209, 219.

C.J.S. Admiralty § 242.

C.J.S. Architects §§ 39, 44.

C.J.S. Bills and Notes; Letters of Credit §§ 103, 132, 340 to 343, 345.

C.J.S. Civil Rights §§ 689, 704.

C.J.S. Indians §§ 151 to 179.

C.J.S. Interest and Usury; Consumer Credit §§ 22, 86 to 92, 97 to 102, 104 to 111, 126 to 128.

§ 3–113. Date of instrument

Date of Instrument

(a) An instrument may be antedated or postdated. The date stated determines the time of payment

if the instrument is payable at a fixed period after date. Except as provided in Section 4–401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>8, 34, 127, 129, 155.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 14, 97, 99 to 102, 117 to 138, 164 to 165.

§ 3–114. Contradictory terms of instrument

Contradictory Terms of Instrument

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>116.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 99 to 102.

§ 3–115. Incomplete instrument

Incomplete Instrument

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under Section 3–104, it

may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3–104, but, after completion, the requirements of Section 3–104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3–407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Obligation of acceptor, see 80 CNCA § 5–413.

Obligation of drawer, see 80 CNCA § 3–414.

Obligation of indorser, see 80 CNCA § 5–415.

Obligation of issuer of note or cashier's check, see 80 CNCA § 3–412.

Transfer warranties, see 80 CNCA § 4–207.

Library References

Bills and Notes <KEY>116 to 132, 378, 492.

Indians <KEY>520(2).

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 26 to 29, 34 to 35, 38 to 40, 97, 99 to 105, 112 to 138, 242, 256, 258 to 260, 315 to 319, 346 to 364.

C.J.S. Indians §§ 151 to 179.

§ 3–116. Joint and several liability; contribution

Joint and Several Liability—Contribution

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or

anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in Section 3–419(f) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>118, 237, 253, 257 to 266, 309, 440.

Contribution <KEY>4.

Westlaw Topic Nos. 56, 96.

C.J.S. Bills and Notes; Letters of Credit §§ 26 to 29, 38 to 40, 68, 112 to 116, 197, 258 to 259.

C.J.S. Contribution §§ 5, 10 to 11.

§ 3–117. Other agreements affecting instrument

Other Agreements Affecting Instrument

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>133 to 135, 136, 137.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 106 to 111, 139 to 140, 142 to 144, 147 to 150.

§ 3–118. Statute of limitations

Statute of Limitations

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>129.

Indians <KEY>508.

Limitation of Actions <KEY>25, 48.

Westlaw Topic Nos. 56, 209, 241.

C.J.S. Bills and Notes; Letters of Credit §§ 97, 117 to 138, 286 to 287.

C.J.S. Indians §§ 151 to 179.

C.J.S. Limitations of Actions §§ 105 to 106, 109, 205 to 209.

§ 3–119. Notice of right to defend action

Notice of Right to Defend Action

In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>444, 460.

Indians <KEY>503, 509.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes; Letters of Credit §§ 275, 279 to 283.

C.J.S. Indians §§ 151 to 179.

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENT

§ 3–201. Negotiation

Negotiation

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>176, 183, 184, 210, 267.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 176, 178 to 179, 181 to 182, 184 to 186, 195.

§ 3–202. Negotiation subject to rescission

Negotiation Subject to Rescission

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>182, 228, 239, 364, 452.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 26 to 28, 34 to 35, 38 to 46, 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 177, 187 to 189, 195, 204, 232 to 233, 235 to 244, 264 to 268, 288 to 289, 291 to 294.

§ 3–203. Transfer of instrument; rights acquired by transfer

Transfer of Instruments—Rights Acquired by Transfer

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>176, 203, 223, 267, 310, 327.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 170, 176, 184 to 185, 195, 207 to 208, 217.

§ 3–204. Indorsement

Indorsement

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that

alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>176 to 202.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 41 to 44, 173 to 174, 176 to 192, 194.

§ 3–205. Special indorsement; blank indorsement; anomalous indorsement

Special Indorsement—Blank Indorsement—Anomalous Indorsement

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3–110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it

is a "blank indorsement." When indorsed in blank, an instrument *becomes* payable to bearer and maybe negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Identification of person to whom instrument is payable, see 80 CNCA § 3–110.

Library References

Bills and Notes <KEY>188, 189, 191, 288, 289, 294.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 26 to 28, 190 to 191, 194.

§ 3–206. Restrictive indorsement

Restrictive Indorsement

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in Section 4–201(b), or (ii) in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in Section 3–307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Effect of instructions, see 80 CNCA § 4–203.

Library References

Bills and Notes <KEY>171, 190, 290.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 192 to 193.

§ 3–207. Reacquisition

Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>193.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit § 183.

PART 3. ENFORCEMENT OF INSTRUMENTS

§ 3–301. Person entitled to enforce instrument

Person Entitled to Enforce Instrument

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in—possession of the instrument who is entitled to enforce the instrument pursuant to Section 3–309 or 3–418(d).

A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>441, 455.

Indians <KEY>509.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes; Letters of Credit §§ 275, 277 to 278, 281 to 285.

C.J.S. Indians §§ 151 to 179.

§ 3–302. Holder in due course

Holder in Due Course

(a) Subject to subsection (c) and Section 3–106(d), "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3–306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3–305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under Section 3–303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Definitions of types of banks, see 80 CNCA § 4–105.

Depository bank holder of unindorsed item, see 80 CNCA § 4–205.

Negotiable instruments, Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Short title, and general concepts, definitions and index of definitions, see 80 CNCA § 9–102.

When bank gives value for purposes of holder in due course, see 80 CNCA § 4–211.

Library References

Bills and Notes <KEY>327 to 384.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 26 to 28, 34 to 35, 38 to 40, 45 to 46, 81, 207 to 244.

§ 3–303. Value and consideration

Value and Consideration

(a) An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) instrument is issued or transferred as payment of or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) instrument is issued or transferred in exchange for a negotiable instrument, or

(5) instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Agreement not to assert defenses against assignee, see 80 CNCA § 9–403.

Assignees and creditors of member, definitions, see 80 CNCA § 5–102.

Negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>90 to 98, 186, 207, 357 to 359.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 55 to 80, 174, 215, 229, 291 to 292, 295.

§ 3–304. Overdue instrument

Overdue Instrument

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) the day after the day demand for payment is duly made;

(2) the instrument is a check, 90 days after its date; or

(3) the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>129, 347.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 97, 117 to 138, 227.

§ 3–305. Defenses and claims in recoupment; claims in consumer transactions

Defenses and Claims in Recoupment—Claims in Consumer Transactions

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3–306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement:

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement: and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this article that establishes a different rule for consumer transactions.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Agreement not to assert defenses against assignee, see 80 CNCA § 9–403.

Library References

Bills and Notes <KEY>99 to 115, 364, 415.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 26 to 28, 34 to 35, 38 to 40, 45 to 46, 81 to 98, 232 to 233, 235 to 244, 248, 290 to 291, 293 to 295, 346 to 347, 360 to 361.

§ 3–306. Claims to an instrument

Claims to an Instrument

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Payment, see 80 CNCA § 3–602.

Library References

Bills and Notes <KEY>314, 363, 450.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 203 to 206, 234, 236, 264 to 268, 288 to 295.

§ 3–307. Notice of breach of fiduciary duty

Notice of Breach of Fiduciary Duty

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Restrictive indorsement, see 80 CNCA § 3–206.

Library References

Bills and Notes <KEY>333, 336.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 209 to 211, 213 to 214, 218, 220 to 222, 224 to 227.

§ 3–308. Proof of signatures and status as holder in due course

Proof of Signatures and Status as Holder in Due Course

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3–402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3–301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>474, 475, 492, 497, 517, 525.

Indians <KEY>511, 520(4).

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes; Letters of Credit §§ 302 to 303, 315 to 319, 333 to 334.

C.J.S. Indians §§ 151 to 179.

§ 3–309. Enforcement of lost, destroyed, or stolen instrument

Enforcement of Lost, Destroyed or Stolen Instrument

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred:

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3–308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>441.

Lost Instruments <KEY>16, 18.

Westlaw Topic Nos. 56, 246.

C.J.S. Bills and Notes; Letters of Credit §§ 275, 277, 281 to 285.

C.J.S. Lost Instruments §§ 21, 26 to 27.

§ 3–310. Effect of instrument on obligation for which taken

Effect of Instrument on Obligation For Which Taken

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Tender of payment by buyer—Payment by check, see 80 CNCA § 2–511.

Library References

Banks and Banking <KEY>189.

Bills and Notes <KEY>428 to 435.

Payment <KEY>15 to 23.

Westlaw Topic Nos. 52, 56, 294.

C.J.S. Banks and Banking §§ 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 132, 151, 253 to 254, 256 to 257, 260 to 263, 270.

C.J.S. Payment §§ 19 to 24, 26.

§ 3–311. Accord and satisfaction by use of instrument

Accord and Satisfaction by Use of Instrument

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Accord and Satisfaction <KEY>1, 11.

Westlaw Topic No. 8.

C.J.S. Accord and Satisfaction §§ 1 to 14, 22 to 32, 51 to 60.

§ 3–312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check

Lost, Destroyed, or Stolen Cashier's Check, Teller's Check, or Certified Check

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank.

Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Section 4–302(a)(1), payment to the claimant discharges—all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section 3–309.

History

Source. LA 26–03, eff. October 2, 2003.

PART 4. LIABILITY OF PARTIES

§ 3–401. Signature

Signature

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3–402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>54 to 59.

Signatures <KEY>1 to 5.

Westlaw Topic Nos. 56, 355.

C.J.S. Bills and Notes; Letters of Credit §§ 30 to 31, 36 to 46.

C.J.S. Signatures §§ 1 to 17.

§ 3–402. Signature by representative

Signature by Representative

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Proof of signatures and status as holder in due course, see 80 CNCA § 3–308.

Library References

Bills and Notes <KEY>54, 123.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 30, 36 to 46, 112 to 113, 115.

§ 3–403. Unauthorized signature

Unauthorized Signature

(a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Bank deposits and collections, definitions of types of banks, see 80 CNCA § 4–105.

Library References

Banks and Banking <KEY>147, 174.

Bills and Notes <KEY>54, 61, 123, 279.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 347, 439 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 30, 36 to 46, 112 to 113, 115, 184, 187 to 188, 195.

§ 3–404. Impostors; fictitious payees

Impostors—Fictitious Payees

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (Section 3–110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Presentment warranties, see 80 CNCA § 4–208.

Library References

Banks and Banking <KEY>147, 174.

Bills and Notes <KEY>239, 279, 377, 381.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 347, 439 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 41 to 46, 184, 187 to 188, 195.

§ 3-405. Employer's responsibility for fraudulent indorsement by employee

Employer's Responsibility for Fraudulent Indorsement by Employee

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Presentment warranties, see 80 CNCA § 4–208.

Library References

Banks and Banking <KEY>147, 174.

Bills and Notes <KEY>201, 239, 279, 452.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 347, 439 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 41 to 44, 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 173, 184, 187 to 188, 195, 204, 264 to 268, 288 to 289, 291 to 294.

§ 3–406. Negligence contributing to forged signature or alteration of instrument

Negligence Contributing to Forged Signature or Alteration of Instrument

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Presentment warranties, see 80 CNCA § 4–208.

Library References

Banks and Banking <KEY>148.

Bills and Notes <KEY>279, 364, 450.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 347, 441 to 449, 461 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 26 to 28, 34 to 35, 38 to 46, 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 184, 187 to 188, 195, 204, 232 to 233, 235 to 244, 264 to 268, 288 to 295.

§ 3–407. Alteration

Alteration

(a) "**Alteration**" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Bank deposits and collections, definitions of types of banks, see 80 CNCA § 4–105.

Incomplete instrument, see 80 CNCA § 3–115.

Negotiable instruments, definitions, see 80 CNCA § 3–103.

Transfer warranties, see 80 CNCA § 4–207.

Library References

Alteration of Instruments <KEY>1 to 30.

Banks and Banking <KEY>147, 174.

Bills and Notes <KEY>136, 378, 450.

Westlaw Topic Nos. 25, 52, 56.

C.J.S. Alteration of Instruments §§ 1 to 175.

C.J.S. Banks and Banking §§ 347, 439 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 34 to 35, 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 139 to 140, 204, 242, 264 to 268, 288 to 295.

§ 3–408. Drawee not liable on unaccepted draft

Drawee Not Liable on Unaccepted Draft

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137.

Bills and Notes <KEY>24, 66 to 70.

Payment <KEY>21.

Westlaw Topic Nos. 52, 56, 294.

C.J.S. Banks and Banking §§ 328, 331, 335 to 336, 340 to 354, 357 to 358, 367 to 371, 374, 376 to

383, 391 to 396, 399 to 401, 404 to 406, 425, 444 to 449, 469 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 19 to 22, 50, 246.

C.J.S. Payment §§ 19, 22 to 23.

§ 3–409. Acceptance of draft; Certified check

Acceptance of Draft—Certified Check

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Bank deposits and collections, definitions of types of banks, see 80 CNCA § 4–105.

Letters of credit, definitions, see 80 CNCA § 5–102.

Negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Banks and Banking <KEY>140(3), 145, 189.

Bills and Notes <KEY>66 to 84.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 351, 380 to 381, 384 to 387, 391 to 396, 399 to 401, 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 19, 22, 26 to 28, 50 to 54.

§ 3–410. Acceptance varying draft

Acceptance Varying Draft

- (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.
- (b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.
- (c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>140(3), 189.

Bills and Notes <KEY>83, 256, 301.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 351, 380 to 381, 391 to 396, 399 to 401, 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 51, 195, 264 to 268, 271 to 272.

§ 3–411. Refusal to pay cashier's checks, teller's checks, and certified checks

Refusal to Pay Cashier's Checks, Teller's Checks, and Certified Checks

- (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
- (b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>145, 189.

Bills and Notes <KEY>23.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 384 to 387, 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 9, 18, 20 to 22.

§ 3–412. Obligation of issuer of note or cashier's check

Obligation of Issuer of Note or Cashier's Check

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3–115 and 3–407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3–415.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>189.

Bills and Notes <KEY>48, 73.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 24 to 29, 52 to 53, 253, 264 to 268, 293.

§ 3-413. Obligation of acceptor

Obligation of Acceptor

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3-414 or 3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>189.

Bills and Notes <KEY>73 to 83.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 482 to 493.

C.J.S. Bills and Notes; Letters of Credit §§ 26 to 28, 51 to 53.

§ 3-414. Obligation of drawer

Obligation of Drawer

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its

terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3–115 and 3–407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3–415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Section 3–415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30–day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Issuer's rights and obligations, see 80 CNCA § 5–108.

Notice of dishonor, see 80 CNCA § 3–503.

Library References

Bills and Notes <KEY>23, 26.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 9, 18 to 22, 246.

§ 3–415. Obligation of indorser

Obligation of Indorser

(a) Subject to subsections (b), (c), (d), (e) and to Section 3–419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3–115 and 3–407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 3–503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Issuer's rights and obligations, see 80 CNCA § 5–108.

Library References

Bills and Notes <KEY>48, 118, 223 to 266, 267 to 309.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 24 to 29, 38 to 44, 68, 112 to 116, 177 to 182, 184, 187 to 188, 190 to 191, 193 to 202, 246, 253, 258 to 259, 264 to 268, 271 to 272, 293.

§ 3–416. Transfer warranties

Transfer Warranties

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that

- (1) the warrantor is a person entitled to enforce the instrument;
 - (2) all signatures on the instrument are authentic and authorized;
 - (3) the instrument has not been altered;
 - (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
 - (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer, and
 - (6) with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.
- (b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
- (c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.
- (d) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137 to 149, 168 to 175.

Bills and Notes <KEY>279, 293, 296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 387, 391 to 406, 412 to 413, 415, 420 to 421, 425, 431 to 432, 434 to 435, 438 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 41 to 44, 184, 187 to 188, 195 to 196, 199 to 202.

§ 3–417. Presentment warranties

Presentment Warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3–404 or 3–405 or the drawer is precluded under Section 3–406 or 4–406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137 to 149, 168 to 175.

Bills and Notes <KEY>279, 296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 387, 391 to 406, 412 to 413, 415, 420 to 421, 425, 431 to 432, 434 to 435, 438 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 41 to 44, 184, 187 to 188, 195, 199 to 202.

§ 3–418. Payment or acceptance by mistake

Payment or Acceptance by Mistake

(a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 4–403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the

acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3–417 or 4–407.

(d) Notwithstanding Section 4–215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Person entitled to enforce instrument, see 80 CNCA § 3–301.

Library References

Banks and Banking <KEY>137 to 147, 171 to 175.

Bills and Notes <KEY>72, 279, 434.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 387, 391 to 406, 415, 425, 432, 434 to 435, 438 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 41 to 44, 54, 184, 187 to 188, 195, 257.

§ 3–419. Instruments signed for accommodation

Instruments Signed for Accommodation

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced

notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument Except as provided in Section 3–605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Joint and several liability—Contribution, see 80 CNCA § 3–116.

Library References

Bills and Notes <KEY>48, 96, 122, 236, 371, 440.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 24 to 29, 68, 112 to 113, 115, 244, 253, 258 to 259, 264 to 268, 293.

§ 3–420. Conversion of instrument

Conversion of Instrument

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Effect of instructions, see 80 CNCA § 4–203.

Library References

Banks and Banking <KEY>137 to 149, 156 to 175.

Conversion and Civil Theft <KEY>100, 106.

Westlaw Topic Nos. 52, 97C.

C.J.S. Banks and Banking §§ 328, 330 to 354, 357 to 358, 367 to 371, 374, 376 to 387, 391 to 415, 417 to 471, 473 to 475, 483.

C.J.S. Trover and Conversion §§ 1 to 7.

PART 5. DISHONOR

§ 3–501. Presentment

Presentment

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Bank deposits and collections, definitions of types of banks, see 80 CNCA § 4–105.

Negotiable instruments, definitions, see 80 CNCA § 3–103.

Presentment by notice of item not payable by, through, or at bank—Liability of drawer or indorser, see 80 CNCA § 4–212.

Library References

Banks and Banking <KEY>137, 156 to 175.

Bills and Notes <KEY>388 to 407.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 415, 417 to 438, 440, 444 to 455, 457 to 461, 467 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 131, 245 to 247, 250, 284.

§ 3–502. Dishonor

Dishonor

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 4–301 or 4–302, or becomes accountable for the amount of the check under Section 4–302.

(2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for

payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 3–504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, sales, general construction and subject matter, definitions, see 80 CNCA § 2–103.

Library References

Banks and Banking <KEY>137.1, 171.

Bills and Notes <KEY>24, 385 to 424.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 334, 338 to 340, 344, 367 to 371, 391 to 403, 415, 432, 434 to 435, 438.

C.J.S. Bills and Notes; Letters of Credit §§ 8, 19 to 21, 131, 245 to 252, 284.

§ 3–503. Notice of dishonor

Notice of Dishonor

(a) The obligation of an indorser stated in Section 3–415(a) and the obligation of a drawer stated in Section 3–414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under Section 3–504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to Section 3–504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Definitions of types of banks, see 80 CNCA § 4–105.

Library References

Banks and Banking <KEY>140(3), 171(5).

Bills and Notes <KEY>393, 411, 422.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 338 to 339, 351, 380 to 381, 391 to 396, 399 to 403, 432, 435, 438.

C.J.S. Bills and Notes; Letters of Credit §§ 131, 245 to 246, 248, 250 to 252, 284.

§ 3–504. Excused presentment and notice of dishonor

Excused Presentment and Notice of Dishonor

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137, 171.

Bills and Notes <KEY>388 to 424.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 406, 415, 425, 432, 434 to 435, 438, 444 to 449, 469 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 131, 245 to 252, 284.

§ 3–505. Evidence of dishonor

Evidence of Dishonor

(a) The following are admissible as evidence and create a presumption of dishonor and of any

notice of dishonor stated:

(1) a document regular in form as provided in subsection (b) which purports to be a protest;

(2) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>154(7), 155.

Bills and Notes <KEY>410, 498, 510.

Indians <KEY>520.

Westlaw Topic Nos. 52, 56, 209.

C.J.S. Banks and Banking §§ 445, 447, 475.

C.J.S. Bills and Notes; Letters of Credit §§ 315, 319, 326, 330 to 332.

C.J.S. Indians §§ 151 to 179.

PART 6. DISCHARGE AND PAYMENT

§ 3–601. Discharge and effect of discharge

Discharge and Effect of Discharge

(a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple

contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>331, 336, 383, 425 to 440.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 132, 151, 209 to 211, 213 to 214, 218 to 227, 243, 253 to 254, 256 to 271.

§ 3–602. Payment

Payment

(a) Subject to subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) even if the party obliged to pay the note has received a notification under this paragraph.

(c) Subject to subsection (e), to the extent of a payment under subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3–306 by another person.

(d) Subject to subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under subsections (a) through (d) if:

(1) a claim to the instrument under Section 3–306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument

(f) As used in this section, "signed," with respect to a record that is not a writing, includes. the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, negotiable instruments, definitions, see 80 CNCA § 3–103.

Library References

Bills and Notes <KEY>426 to 435, 440.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 132, 151, 253 to 254, 256 to 263, 270.

§ 3–603. Tender of payment

Tender of Payment

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>429.

Interest <KEY>50.

Tender <KEY>19 to 21.

Westlaw Topic Nos. 56, 219, 374.

C.J.S. Bills and Notes; Letters of Credit §§ 132, 256, 260 to 262.

C.J.S. Interest and Usury; Consumer Credit §§ 112, 120 to 122.

C.J.S. Tender §§ 37 to 40.

§ 3–604. Discharge by cancellation or renunciation

Discharge by Cancellation or Renunciation

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with fee present intent to adopt or accent the record.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>193, 256, 301, 438.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 183, 195, 264 to 272.

§ 3–605. Discharge of secondary obligors

Discharge of Secondary Obligor

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsections (a)(3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 3419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the

circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Bills and Notes <KEY>49, 52, 256, 301, 436.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 24 to 29, 195, 253, 258 to 259, 264 to 272.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Oklahoma Statutes

Commercial code, bank deposits and collections, see 12A O.S. § 4–101 et seq.

PART 1. GENERAL PROVISIONS AND DEFINITIONS

§ 4–101. Short title

Short Title

This Article may be cited as Uniform Commercial Code—Bank Deposits and Collections.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>119 to 153, 156 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to 250, 274 to 276, 280 to 325, 327 to 328, 330 to 415, 417 to 471, 473 to 475, 483.

§ 4–102. Applicability

Applicability

(a) To the extent that items within this Article are also within Articles 3 and 8, they are subject to those Articles. If there is conflict, this Article governs Article 3, but Article 8 governs this Article.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Territorial applicability—Parties' power to choose applicable law, see 80 CNCA § 1–301.

§ 4–103. Variation by agreement—Measure of damages—Action constituting ordinary care

Variation by Agreement—Measure of Damages—Action Constituting Ordinary Care

(a) The effect of the provisions of this Article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise

ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this Article is not disapproval of other procedures that may be reasonable under the circumstances:

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>119 to 155, 156 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to 250, 274 to 276, 280 to 325, 327 to 328, 330 to 415, 417 to 475, 483.

§ 4-104. Definitions and index of definitions

Definitions and Index of Definitions

(a) In this Article, unless the context otherwise requires:

(1) "**Account**" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "**Afternoon**" means the period of a day between noon and midnight;

(3) **"Banking day"** means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) **"Clearing house"** means an association of banks or other payors regularly clearing items;

(5) **"Customer"** means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) **"Documentary draft"** means a draft to be presented for acceptance or payment if specified documents, certificated securities (Section 8–102) or instructions for uncertificated securities (Section 8–102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) **"Draft"** means a draft as defined in Section 3–104 or an item, other than an instrument, that is an order,

(8) **"Drawee"** means a person ordered in a draft to make payment;

(9) **"Item"** means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) **"Midnight deadline"** with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) **"Settle"** means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) **"Suspends payments"** with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment" Section 4–110.

"Collecting bank" Section 4–105.

"Depository bank" Section 4–105.

"Intermediary bank" Section 4–105.

"Payor bank" Section 4–105.

"Presenting bank" Section 4–105.

"Presentment notice" Section 4–110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance" Section 3–409.

"Alteration" Section 3–407.

"Cashier's check" Section 3–104.

"Certificate of deposit" Section 3–104.

"Certified check" Section 3–409.

"Check" Section 3–104.

"Good faith" Section 3–103.

"Holder in due course" Section 3–302.

"Instrument" Section 3–104.

"Notice of dishonor" Section 3–503.

"Order" Section 3–103.

"Ordinary care" Section 3–103.

"Person entitled to enforce" Section 3–301.

"Presentment" Section 3–501.

"Promise" Section 3–103.

"Prove" Section 3–103.

"Record" Section 3–103.

"Remotely-created consumer item" Section 3–103.

"Teller's check" Section 3–104.

"Unauthorized signature" Section 3–403.

(d) In addition, Article I contains general definitions and principles of construction and

interpretation applicable throughout this Article.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Negotiable instruments, definitions, see 80 CNCA § 3–103.

Secured transactions, definitions and index of definitions, see 80 CNCA § 9–102.

Library References

Banks and Banking <KEY>119 to 155, 156 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to 250, 274 to 276, 280 to 325, 327 to 328, 330 to 415, 417 to 475, 483.

§ 4–105. Definitions of types of banks

Definitions of Types of Banks

In this Article:

- (1) "**Bank**" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;
- (2) "**Depository bank**" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;
- (3) "**Payor bank**" means a bank that is the drawee of a draft;
- (4) "**Intermediary bank**" means a bank to which an item is transferred in course of collection except the depository or payor bank;
- (5) "**Collecting bank**" means a bank handling an item for collection except the payor bank;
- (6) "**Presenting bank**" means a bank presenting an item except a payor bank.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>119 to 121, 156 to 158.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 232, 248 to 250, 274 to 276, 280, 285 to 290, 298, 332 to 333, 337, 407 to 408, 412 to 413, 417 to 418, 427 to 429, 433.

§ 4–106. Payable through or payable at bank: Collecting bank

Payable Through or Payable at Bank: Collecting Bank

(a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

ALTERNATIVE A

(b) If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.

ALTERNATIVE B

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>144.

Westlaw Topic No. 52.

§ 4–107. Separate office of bank

Separate Office of Bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time

within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>33, 119, 156.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 46 to 47, 232, 248 to 250, 274, 276, 280, 285 to 286, 289, 298, 332 to 333, 407 to 408, 418, 428.

§ 4–108. Time of receipt of items

Time of Receipt of Items

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P.M. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>121, 140(3), 158.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 287 to 290, 337, 351, 380 to 381, 391 to 396, 399 to 401, 412 to 413, 417, 427, 429, 433.

§ 4–109. Delays

Delays

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a

specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this Act for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Act or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>171(4).

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 338 to 339, 397, 435.

§ 4–110. Electronic presentment

Electronic Presentment

(a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>121, 158, 188.5.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 287 to 290, 337, 412 to 413, 417, 427, 429, 433, 476 to 481.

§ 4–111. Statute of limitations

Statute of Limitations

An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>154(2), 175, 219.

Indians <KEY>508.

Westlaw Topic Nos. 52, 209.

C.J.S. Banks and Banking §§ 447, 458 to 459, 464 to 465, 470 to 471, 473 to 475, 510.

C.J.S. Indians §§ 151 to 179.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§ 4–201. Status of collecting bank as agent and provisional status of credits—Applicability of article—item indorsed "pay any bank"

Status of Collecting Bank as Agent and Provisional Status of Credits—Applicability of Article—Item Indorsed "Pay Any Bank"

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to an item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this Article

apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- (1) returned to the customer initiating collection; or
- (2) specially indorsed by a bank to a person who is not a bank.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Restrictive indorsement, see 80 CNCA § 3–206.

Library References

Banks and Banking <KEY>149, 156 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 334, 336 to 339, 391 to 403, 407 to 415, 417 to 438, 440, 444 to 461, 467 to 468, 473 to 475.

§ 4–202. Responsibility for collection or return—When action timely

Responsibility for Collection or Return—When Action Timely

(a) A collecting bank must exercise ordinary care in:

- (1) presenting an item or sending it for presentment;
- (2) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
- (3) settling for an item when the bank receives final settlement; and
- (4) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action

within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>149, 160 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334, 336, 338 to 339, 391 to 403, 407, 409 to 415, 418, 420 to 426, 428, 430 to 438, 440, 444 to 461, 467 to 468, 473 to 475.

§ 4–203. Effect of instructions

Effect of Instructions

Subject to Article 3 concerning conversion of instruments (Section 3–420) and restrictive indorsements (Section 3–206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>160, 168.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 334, 336, 410 to 414, 418, 420 to 426, 430 to 431, 433, 436 to 437, 445, 447 to 449.

§ 4–204. Methods of sending and presenting—Sending directly to payor bank

Methods of Sending and Presenting—Sending Directly to Payor Bank

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) an item directly to the payor bank;

(2) an item to a nonbank payor if authorized by its transferor; and

(3) an item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>160.1 to 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334, 336, 338 to 339, 391 to 403, 407, 409 to 415, 418, 420 to 426, 428, 430 to 438, 445, 447 to 449.

§ 4–205. Depositary bank holder of unindorsed item

Depositary Bank Holder of Unindorsed Item

If a customer delivers an item to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3–302, it is a holder in due course; and

(2) the depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137, 147, 160 to 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 407, 409 to 415, 418, 420 to 426, 428, 430 to 471, 473 to 475, 483.

§ 4-206. Transfer between banks

Transfer Between Banks

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>149, 160.

Bills and Notes <KEY>176.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430 to 431, 433, 436 to 437, 450 to 461, 467 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 176, 184 to 185.

§ 4-207. Transfer warranties

Transfer Warranties

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) the warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;

(4) the item is not subject to a defense or claim in recoupment (Section 3–305(a)) of any party that can be asserted against the warrantor;

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer, and

(6) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3–115 and 3–407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137, 147, 160, 174.

Bills and Notes <KEY>296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330 to 331, 335 to 336, 340 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 396, 399 to 401, 404 to 406, 410 to 411, 414, 418, 420 to 426, 430 to 431, 433, 436 to 437, 439 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 199 to 202.

§ 4-208. Presentment warranties

Presentment Warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered; and

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 or the drawer is precluded under Section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount

equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Customer's duty to discover and report unauthorized signature or alteration, see 80 CNCA § 4–406.

Payor's bank responsibility for late return of item, see 80 CNCA § 4–302.

Library References

Banks and Banking <KEY>137, 146, 147, 160, 173, 174.

Bills and Notes <KEY>296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 330 to 331, 335 to 336, 340 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 396, 399 to 401, 404 to 406, 410 to 411, 414, 418, 420 to 426, 430 to 431, 433 to 434, 436 to 437, 439 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 199 to 202.

§ 4–209. Encoding and retention warranties

Encoding and Retention Warranties

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>149, 160, 188.5.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430 to 431, 433, 436 to 437, 450 to 461, 467 to 468, 476 to 481.

§ 4–210. Security interest of collecting bank in items, accompanying documents and proceeds

Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section 9–

203(l)(a));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Priorities among conflicting security interests in and agricultural liens on same collateral, see 80 CNCA § 9–322.

Scope, see 80 CNCA § 9–109.

Security interest perfected upon attachment, see 80 CNCA § 9–309.

Library References

Banks and Banking <KEY>136, 159, 164.

Secured Transactions <KEY>88, 89.

Westlaw Topic Nos. 52, 349A.

C.J.S. Banks and Banking §§ 284, 409, 414, 418 to 419, 428, 445.

C.J.S. Secured Transactions §§ 63 to 68.

§ 4–211. When bank gives value for purposes of holder in due course

When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3–302 on what constitutes a holder in due course.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, letters of credit, definitions, see 80 CNCA § 5–102.

Library References

Bills and Notes <KEY>352.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 211, 228 to 231.

§ 4–212. Presentment by notice of item not payable by, through, or at bank—Liability of drawer or indorser

Presentment by Notice of Item Not Payable By, Through, or At Bank—Liability of Drawer or Indorser

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3–501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3–501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>160.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430 to 431, 433, 436 to 437.

§ 4–213. Medium and time of settlement by bank

Medium and Time of Settlement by Bank

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) the medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) the time of settlement, is:

(i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

History

Source. LA 26-03, eff. October 2, 2003.

Oklahoma Statutes

Payment by originator to beneficiary; discharge of underlying obligation, see 12A O.S. § 4A–406.

Library References

Banks and Banking <KEY>137, 160, 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 406, 410 to 411, 414 to 415, 418, 420 to 426, 430 to 438, 444 to 449, 469 to 471, 473 to 475, 483.

§ 4–214. Right of charge-back or refund—Liability of collecting bank—Return of item

Right of Charge-Back or Refund—Liability of Collecting Bank—Return of Item

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4–301).

(d) The right to charge back is not affected by:

(1) previous use of a credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money,

the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>158, 160, 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 334, 336 to 339, 391 to 403, 410 to 415, 417 to 418, 420 to 427, 429 to 438.

§ 4–215. Final payment of item by payor bank—When provisional debits and credits become final—When certain credits become available for withdrawal

Final Payment of Item by Payor Bank—When Provisional Debits and Credits Become Final—When Certain Credits Become Available for Withdrawal

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) paid the item in cash;

(2) settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits *or* credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank

to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) if the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) if the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Payment or acceptance by mistake, see 80 CNCA § 3–418.

Library References

Banks and Banking <KEY>137, 168, 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 406, 412 to 413, 415, 420 to 421, 425, 431 to 432, 434 to 435, 438, 444 to 449, 469 to 471, 473 to 475, 483.

§ 4–216. Insolvency and preference

Insolvency and Preference

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the

settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes Final, the owner of the item has a preferred claim against the collecting bank.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>73 to 77, 166, 167.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 162, 171 to 189, 414.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

§ 4–301. Posting—Recovery of payment by return of items—Time of dishonor—Return of items by payor bank

Posting—Recovery of Payment by Return of Items—Time of Dishonor—Return of Items by Payor Bank

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) returns the item;

(2) returns an image of the item, if the party to which the return is made has entered

(3) into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Dishonor, see 80 CNCA § 3–502.

Presentment by notice of item not payable by, through, or at bank—Liability of drawer or indorser, see 80 CNCA § 4–212.

Library References

Banks and Banking <KEY>137, 163, 168, 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 407, 412 to 413, 415, 420 to 421, 425, 431 to 432, 434 to 435, 438, 444 to 449, 469 to 471, 473 to 475, 483.

§ 4–302. Payor's bank responsibility for late return of item

Payor's Bank Responsibility for Late Return of Item

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (Section 4–208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Dishonor, see 80 CNCA § 3–502.

Lost, destroyed, or stolen cashier's check, teller's check, or certified check, see 80 CNCA § 3–312.

Library References

Banks and Banking <KEY>137 to 149, 168 to 171.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331, 334 to 336, 338 to 354, 357 to 358, 367 to 371, 374, 376 to 387, 391 to 406, 412 to 413, 415, 420 to 421, 425, 431 to 432, 434 to 435, 438 to 471, 473 to 475, 483.

§ 4–303. When items subject to notice, stop-payment order, legal process, or setoff—Order in which items may be changed or certified

When Items Subject to Notice, Stop-Payment Order, Legal Process, or Setoff—Order in Which Items May Be Changed or Certified

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) the bank accepts or certifies the item;

(2) the bank pays the item in cash;

(3) the bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; the bank becomes accountable for the amount of the item under

Section 4–302

(4) dealing with the payor bank's responsibility for late return of items; or

(5) with respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Customer's right to stop payment—Burden of proof of loss, see 80 CNCA § 4–403.

When bank may charge customer's account, see 80 CNCA § 4–401.

Library References

Banks and Banking <KEY>134, 139, 140.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 312 to 325, 327, 335, 345 to 352, 376 to 381, 391 to 396, 399 to 401, 444 to 449, 483.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 4–401. When bank may charge customer's account

When Bank May Charge Customer's Account

(a) A bank may charge against the account of a customer an item that is properly payable from the account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the

customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 4–403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4–303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 4–402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) the original terms of the altered item; or

(2) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Date of instrument, see 80 CNCA § 3–113.

Library References

Banks and Banking <KEY>137 to 150, 158, 174.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 331, 335 to 337, 340 to 354, 357 to 358, 367 to 387, 391 to 396, 399 to 401, 404 to 406, 412 to 413, 417, 425, 427, 429, 433, 439 to 471, 473 to 475, 483.

§ 4–402. Bank's liability to customer for wrongful dishonor, time of determining insufficiency of account

Bank's Liability to Customer for Wrongful Dishonor, Time of Determining Insufficiency of Account

(a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential

damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>143.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 404 to 406, 469 to 471, 473 to 475.

§ 4–403. Customer's right to stop payment—Burden of proof of loss

Customer's Right to Stop Payment—Burden of Proof of Loss

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4–303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4–402.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Payment or acceptance by mistake, see 80 CNCA § 3–418.

Library References

Banks and Banking <KEY>139.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 335, 348 to 349, 376 to 377, 483.

§ 4–404. Bank not obliged to pay check more than six months old

Bank Not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 331, 335 to 336, 340 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 396, 399 to 401, 404 to 406, 425, 444 to 449, 469 to 471, 473 to 475, 483.

§ 4–405. Death or incompetence of customer

Death or Incompetence of Customer

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks

drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>137, 156, 168.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 336, 340 to 354, 357 to 358, 367 to 371, 374, 376 to 383, 391 to 396, 399 to 401, 404 to 408, 412 to 413, 418, 420 to 421, 425, 428, 431, 444 to 449, 469 to 471, 473 to 475, 483.

§ 4–406. Customer's duty to discover and report unauthorized signature or alteration

Customer's Duty to Discover and Report Unauthorized Signature or Alteration

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c), the customer is precluded from asserting against the bank:

(1) the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

History

Source. LA 26-03, eff. October 2, 2003.

Cross References

Presentment warranties, see 80 CNCA § 3-417.

Library References

Banks and Banking <KEY>148(3), 148(4).

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 461 to 466.

§ 4-407. Payor bank's right to subrogation on improper payment

Payor Bank's Right to Subrogation On Improper Payment

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights

- (1) of any holder in due course on the item against the drawer or maker;
- (2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Payment or acceptance by mistake, see 80 CNCA § 3–418.

Library References

Banks and Banking <KEY>142.

Subrogation <KEY>4.

Westlaw Topic Nos. 52, 366.

C.J.S. Banks and Banking §§ 353, 382 to 383.

C.J.S. Subrogation §§ 46 to 47.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

§ 4–501. Handling of documentary drafts—Duty to send for presentment and to notify customer of dishonor

Handling of Documentary Drafts—Duty to Send for Presentment and to Notify Customer of Dishonor

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>161.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430, 433, 436 to 437.

§ 4-502. Presentment of "on arrival" drafts

Presentment of "On Arrival" Drafts

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

History

Source. LA 26-03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>161.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430, 433, 436 to 437.

§ 4-503. Responsibility of presenting bank for documents and goods—Report of reasons for dishonor—Referee in case of need

Responsibility of Presenting Bank for Documents and Goods—Report of Reasons for Dishonor—Referee in Case of Need

Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the

presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

However the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>161.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430, 433, 436 to 437.

§ 4–504. Privilege of presenting bank to deal with goods—Security interest for expenses

Privilege of Presenting Bank to Deal With Goods—Security Interest for Expenses

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably "requested instructions" but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>161.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336, 410 to 411, 414, 418, 420 to 426, 430, 433, 436 to 437.

REVISED ARTICLE 5

LETTERS OF CREDIT

Oklahoma Statutes

Commercial code, letters of credit, see 12A O.S. § 5–101 et seq.

§ 5–101. Short title

Short Title

This article may be cited as Uniform Commercial Code—Letters of Credit.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–102. Definitions

Definitions

(a) In this article:

(1) **"Adviser"** means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) **"Applicant"** means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) **"Beneficiary"** means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) **"Confirmer"** means a nominated person who undertakes, at the request or with the consent of

the issuer, to honor a presentation under a letter of credit issued by another.

(5) "**Dishonor**" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "**Document**" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in Section 5–108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "**Good faith**" means honesty in fact in the conduct or transaction concerned.

(8) "**Honor**" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs

(i) upon payment,

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "**Issuer**" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "**Letter of credit**" means a definite undertaking that satisfies the requirements of Section 5–104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "**Nominated person**" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) "**Presentation**" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "**Presenter**" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "**Record**" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) **"Successor of a beneficiary"** means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other Articles applying to this article and the sections in which they appear are:

"Accept" or **"Acceptance"** Section 3–409

"Value" Sections 3–303, 4–211

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–103. Scope

Scope

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), Sections 5–102(a)(9) and (10), 5–106(d), and 5–114(d), and except to the extent prohibited in Sections 1–102(3) and 5–117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking A term in an agreement or undertaking generally excusing liability or

generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–104. Formal requirements

Formal Requirements

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 5–108(e).

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.10.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 402, 405 to 408.

§ 5–105. Consideration

Consideration

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.10.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 402, 405 to 408.

§ 5–106. Issuance, amendment, cancellation, and duration

Issuance, Amendment, Cancellation, and Duration

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that . person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–107. Confirmer, nominated person, and adviser

Confirmer, Nominated Person, and Adviser

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–108. Issuer's rights and obligations

Issuer's Rights and Obligations

(a) Except as otherwise provided in Section 5–109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5–113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor,

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation, or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in Section 5–109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction,

(2) an act or omission of others, or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under Section 5–102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter,

(3) is precluded from asserting a right of recourse on a draft under Sections 3–414 and 3–415;

(4) except as otherwise provided in Sections 5–110 and 5–117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

§ 5–109. Fraud and forgery

Fraud and Forgery

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds mat:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation

incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Payment by buyer before inspection, see 80 CNCA § 2–512.

Library References

Banks and Banking <KEY>191.15, 191.20.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 379, 383 to 384, 388, 398, 400, 403 to 404, 408, 415.

§ 5–110. Warranties

Warranties

(a) If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in Section 5–109(a); and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under Article 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.20.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 379, 383 to 384, 388, 398, 400, 403 to 404, 408, 415.

§ 5–111. Remedies

Remedies

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that

is reasonable in light of the harm anticipated.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.30.

Indians <KEY>533.

Westlaw Topic Nos. 52, 209.

C.J.S. Bills and Notes; Letters of Credit §§ 400, 411 to 415.

C.J.S. Indians §§ 151 to 179.

§ 5–112. Transfer of letter of credit

Transfer of Letter of Credit

(a) Except as otherwise provided in Section 5–113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in Section 5–108(e) or is otherwise reasonable under the circumstances.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.10.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 402, 405 to 408.

§ 5–113. Transfer by operation of law

Transfer by Operation of Law

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in Section 5–108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in Section 5–108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5–109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.10.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 402, 405 to 408.

§ 5–114. Assignment of proceeds

Assignment of Proceeds

(a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Uniform Commercial Code, secured transactions, definitions, see 80 CNCA § 9–102.

Scope, see 80 CNCA § 9–109.

Library References

Banks and Banking <KEY>191.10.

Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 402, 405 to 408.

§ 5–115. Statute of limitations

Statute of Limitations

An action to enforce a right or obligation arising under this article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the [claim for relief] [cause of action] accrues, whichever occurs later. A [claim for relief] [cause of action] accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.30.

Indians <KEY>508.

Limitation of Actions <KEY>25, 48.

Westlaw Topic Nos. 52, 209, 241.

C.J.S. Bills and Notes; Letters of Credit §§ 286 to 287, 400, 411 to 415.

C.J.S. Indians §§ 151 to 179.

C.J.S. Limitations of Actions §§ 105 to 106, 109, 205 to 209.

§ 5–116. Choice of law and forum

Choice of Law and Forum

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5–104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action

or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5–103(c).

(d) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

History

Source. LA 26–03, eff. October 2, 2003.

Cross References

Law governing perfection and priority of security interests in letter-of-credit rights, see 80 CNCA § 9–306.

Territorial applicability—Parties' power to choose applicable law, see 80 CNCA § 1–301.

Library References

Banks and Banking <KEY>191.30.

Contracts <KEY>127(4), 129(1), 206.

Westlaw Topic Nos. 52, 95.

C.J.S. Bills and Notes; Letters of Credit §§ 400, 411 to 415.

C.J.S. Contracts §§ 301 to 302, 310 to 313, 347.

§ 5–117. Subrogation of issuer, applicant, and nominated person

Subrogation of Issuer, Applicant, and Nominated Person

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a).

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

History

Source. LA 26–03, eff. October 2, 2003.

Library References

Banks and Banking <KEY>191.

Subrogation <KEY>2.

Westlaw Topic Nos. 52, 366.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.

C.J.S. Subrogation §§ 23 to 24.

ARTICLE 6

[REPEALED]