

In many areas, paper-based payment systems are giving way to electronic transfers of funds. In the future, it may be that electronic payment will be the norm, and paper transfers increasingly rare, although at present, promissory notes and checks still play important roles in commercial transactions. Given that, it makes little sense to call casebooks on point “Negotiable Instruments Law” or “Commercial Paper” and a number of recent books have opted for a title such as “Payment and Credit Systems Law.” We have chosen to call this work “Problems and Materials on Payment Law.” The omission of a reference to “credit” is deliberate. Of course, promissory notes and credit cards are used to acquire credit (as are checks when the drawer is attempting to ride the float period during their collection), but the law covered by the casebooks doesn’t focus on the credit function. If it did, it would have to cover all the credit issues better left to a course in consumer law (qualifying for credit, granting credit, the disclosing of credit information, etc.). Instead, even with promissory notes and credit cards, the legal issues we are concerned with deal with payment problems: Who owes what to whom? Consequently, the umbrella term “payment law” seems to us the best shorthand reference to our subject.

This book explores the law of payment primarily through focusing on a series of Problems designed to encourage the student to concentrate on the exact statutory language in the Uniform Commercial Code, the Electronic Fund Transfer Act, and the Expedited Funds Availability Act. While we have included illustrative cases to demonstrate the reactions of the courts to these issues, we have used only those we felt were very important; most UCC court decisions are too imposing, either factually or legally, to make good pedagogical tools.

Unfortunately, students reared on the case method sometimes have trouble concentrating on Problem after Problem. Such an attitude here can be academically fatal. As a guide to the degree of concentration required, we have used a hierarchy of signals. When the Problem states “Read §3-406,” we mean “Put down this book, pick up the Uniform Commercial Code, and study §3-406 carefully.” When the instruction is “See §3-406,” the reader need look at the cited section only if unsure of the answer. “Cf. §3-406,” or simply “§3-406,” is a lesser reference included as a guide for the curious.

We have heard it said that law students cannot follow legal Problems having more than two characters. If true, payment law would be unteachable,

as its issues almost always involve three or more parties. To help the reader keep them straight, we have given the characters in our Problems distinctive names and, we hope, have created interesting factual patterns, all designed to keep the mind alive.

We have edited the footnotes out of most cases; the ones that remain have been stripped of their original numbering and have been consecutively numbered with our own footnotes. Unless clearly indicated otherwise, all footnotes in the cases are the court's own. We have also taken the liberty to change most statutory citations in cases to their simple Uniform Commercial Code form.

Whaley wishes to acknowledge the debt he owes to the late Professor R. Bruce Townsend, formerly of the faculty of the Indiana University, Indianapolis Law School, one of the drafters of the Uniform Commercial Code and Whaley's mentor in his early days of teaching this subject. Professor John J. Slain, New York University School of Law, also deserves thanks for helping Whaley organize his initial exploration of the world of investment securities. As always, Whaley is indebted to the fine people at Aspen Publishing, who have taken good care of him through seven casebooks. McJohn adds his thanks to our friends at Aspen and his colleagues at Suffolk. Finally, our grateful thanks go to our many students, who through the years have taught us as much about the law as we taught them.

Douglas J. Whaley
Stephen M. McJohn

August 2024