

## Loss Allocation Rules of Thumb and Technical Rules that Dictate Results

General Rules (Accomplished through various technical rules listed below.)

- i) Thief, deadbeat, or otherwise naughty person is always liable (if we can catch him and if he has money when we do.)
- ii) The loss will come to rest on the party who last dealt with the thief, deadbeat, or naughty person. Often this is the bank or other party taking the check or note. Forged indorsement or alteration is often the issue.
- iii) The drawee/payor bank will bear the loss if it pays the check over a forged drawer's signature. Derives from the rule of *Price v. Neal* (and the properly payable rule), and obviously involves a forged drawer's signature.
- iv) In the case of bearer paper, the person holding the check or note at the time of theft bears the loss. "Never carry around more bearer paper than you can afford to lose."

### Special Rules

- i) Bank Statement Rule – Must exercise reasonable promptness in examining bank statements and reporting problems or customer will bear the loss. § 4-406.
- ii) Fraudulent Indorsement by a Responsible Employee – Negligence principle that says employer should bear the loss. § 3-405.
- iii) Imposter or "Tricked Drawer" and Fictitious Payees – Negligence principle that says that negligent drawer should bear the loss. § 3-404.
- iv) Breach of Fiduciary Duty – Implications with regard to a breach of fiduciary duty in setting of negotiable instruments. § 3-307.
- v) General Negligence – Comparative negligence principle that says a negligent party should be made to bear at least a portion of the loss. § 3-406.

### Technical Rules that Dictate Results

- i) Properly Payable Rule – § 4-401
- ii) Wrongful Dishonor and Subrogation – §§ 4-402 and 4-407
- iii) Negotiation and Status as Holder/PETE – §§ 3-301, 1-201(b)(21)(A), 3-109, and 3-201
- iv) Alteration and Incomplete Instrument Rules – §§ 4-401(d), 3-407, and 3-115
- v) Indorser's Liability – § 3-415
- vi) Warranties
  - (1) Presentment Warranties – §§ 3-417 and 4-208
  - (2) Transfer Warranties – §§ 3-416 and 4-207
- vii) Conversion Claims – § 3-420 and occasionally other law
- viii) Drawer's and Maker's Liability – §§ 3-414 and 3-412
- ix) Chargeback Rights – § 4-214
- x) Holder in Due Course Rules – § 3-302, et seq.
- xi) Subrogation – § 4-407
- xii) Shelter Rule – § 3-203(b)