Commercial Transactions

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Recommended Citation
University of the Pacific; McGeorge School of Law, Commercial Transactions, 22 Pac. L. J. 452 (1991).
Available at: https://scholarlycommons.pacific.edu/mlr/vol22/iss2/15

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Commercial Transactions

Commercial Transactions; delivery time requirements

Civil Code § 1722 (amended).
SB 1968 (Lockyer); 1990 STAT. Ch. 193

Under existing law, cable television companies, utility companies, and retailers with twenty-five or more employees must specify to consumers a four hour period when the delivery of merchandise or connection or repair of services will be made.\(^1\) Under Chapter 193, any provision of a delivery or services contract\(^2\) that modifies or waives a consumer's delivery right is void as against public policy.\(^3\)

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1. CAL. CIV. CODE §§ 1722(a)(1)-(2), 1722(b)(1)-(2), 1722(c)(1)-(2) (amended by Chapter 193). A four-hour delivery or service period must only be specified if the presence of the consumer is required. Id. §§ 1722(a)(1), 1722(b)(1), 1722(c)(1) (amended by Chapter 193). If no unforeseen or unavoidable circumstance occurs, any failure to deliver or perform during the specified period may be grounds for a suit brought by the consumer in small claims court for lost wages and expenses up to $500. Id. §§ 1722(a)(2), 1722(b)(2), 1722(c)(2) (amended by Chapter 193). See CAL. CIV. PROC. CODE § 116.2 (West Supp. 1990) (jurisdiction of small claims court). See generally Review of Selected 1989 California Legislation, 21 PAC. L.J. 331, 394 (1990) (review of California Civil Code section 1722).


3. Id. § 1722(d) (amended by Chapter 193).
Commercial Transactions; electronic funds transfers

Commercial Code §§ 11101, 11102, 11103, 11104, 11105, 11106, 11107, 11108, 11201, 11202, 11203, 11204, 11205, 11206, 11207, 11208, 11209, 11210, 11211, 11212, 11301, 11302, 11303, 11304, 11305, 11401, 11402, 11403, 11404, 11405, 11406, 11501, 11502, 11503, 11504, 11505, 11506, 11507 (new); § 1105 (amended).

SB 1759 (Beverly); 1990 STAT. Ch. 125
Sponsor: California Commission on Uniform State Laws
Support: California Bankers Association, California Bankers Clearing House Association, National Conference for Uniform State Laws

Existing law sets forth the rights and obligations of parties that make payments by check or draft.¹ Chapter 125 sets forth comprehensive provisions governing electronic funds transfers.²


² CAL. COM. CODE §§ 11101-11507 (enacted by Chapter 125). Chapter 125 does not apply to any funds transfers that are governed by federal regulation under the Electronic Fund Transfer Act of 1978 (EFTA). Id. § 11108 (enacted by Chapter 125). See CAL. COM. CODE § 11104(a) (enacted by Chapter 125) (definition of funds transfer). Cf. 15 U.S.C. § 1693a(6) (1988) (definition of electronic funds transfer); id. §§ 1693-1693r (federal consumer protection for electronic funds transfers); U.C.C. § 4A-104 comment 2 (1990) (U.C.C. provisions identical to Chapter 125 that apply to any payment order made within the banking system); id. § 4A-104(a)(1)(iii) comment 5 (U.C.C. provisions identical to Chapter 125 that do not apply to payments made by check or credit card). See generally Ballen, Beyond Enactment of Article 4A: The Next Step, 45 Bus. Law. 1509 (1990) (discussing the rules that funds transfer systems may wish to adopt in light of U.C.C. article 4A); Baxter, The Interrelationship of Article 4A With Other Law, 45 BUS. LAW. 1485 (1990) (examining points of contact between U.C.C. article 4A and eleven other bodies of law); Fry, Basic Concepts in Article 4A: Scope and Definitions, 45 BUS. LAW. 1401 (1990) (discussing the scope of U.C.C. article 4A and describing the transactions governed by article 4A); Goldstein, Federal Versus State Adoption of Article 4A, 45 BUS. LAW. 1513 (1990) (arguing for federal rather than state adoption of U.C.C. article 4A); Esposito, supra note 1, at 79 (EFTA covers electronic funds transfers between consumers and financial institutions); id. at 75-78 (overview of corporate electronic funds transfers).
Commercial Transactions

Under Chapter 125, where an agreed-upon security procedure is employed, a receiving bank may not enforce or retain payment of an unauthorized payment order if the customer did not directly or indirectly cause the order. If an accepted payment
order is erroneously transmitted{9} under an error detection security procedure, the sender{10} is obliged to pay the receiving bank for the order. However, if a sender proves that the error would have been detected if the receiving bank had not also failed to comply with the security procedure, the sender is not obliged to pay.{12}

When a payment order using a name and number identifies different beneficiaries, the beneficiary’s bank{13} may rely on the number if that bank does not know{14} of the discrepancy. Under Chapter 125, if the beneficiary’s bank pays the person identified by number and the originator{16} of the payment order is a bank, the

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9. See CAL. COM. CODE § 11205(a)(i)-(iii) (enacted by Chapter 125) (three types of erroneous transmissions are payment to a beneficiary not intended by the sender, an error in the amount of the order, and an order that is mistakenly sent twice). See also Baxter, supra note 7, at 1459 (discussing the three general types of errors); French, supra note 3, at 1443 (discussing U.C.C. article 4A’s handling of erroneous payment orders).

10. See CAL. COM. CODE § 11103(a)(5) (enacted by Chapter 125) (definition of sender). See also Fry, supra note 2, at 1412 (sender is the party that gives an instruction to receiving bank).

11. CAL. COM. CODE § 11205 (enacted by Chapter 125). A sender that is not obliged to pay an order must notify the bank of the error within 90 days or the sender may be liable to the bank for the loss. Id. § 11205(b) (enacted by Chapter 125). See also Baxter, supra note 9, at 1465 (sender has two duties of notification when an erroneous execution has occurred). See generally French, supra note 3, at 1425 (examining the treatment of unauthorized and erroneous payment orders).

12. CAL. COM. CODE § 11205(a)(1)-(2) (enacted by Chapter 125). A receiving bank is entitled to recover from a beneficiary any amount paid to the extent allowed under mistake and restitution law. Id. § 11205(a)(2)-(3) (enacted by Chapter 125). See id. § 11103(a)(2) (enacted by Chapter 125) (definition of beneficiary). Cf. U.C.C. § 4A-205 comment 2 (1990) (risk of loss shifted to receiving bank since the receiving bank has duty to comply with security procedure).


14. See CAL. COM. CODE § 1201(25) (West Supp. 1990) (definition of know). See also id. § 1201(27) (rules for determining when an organization has knowledge of information received by the organization).

15. Id. § 11207(b)(1) (enacted by Chapter 125). The originator has no obligation to pay the beneficiary bank if the beneficiary bank pays a nonexistent or unidentifiable person. Id. § 11207(a) (enacted by Chapter 125). A beneficiary bank is not required to verify that the name and number refer to the same person. Id. § 11207(b)(1) (enacted by Chapter 125). If a beneficiary bank pays the person identified by name or knows that the name and number identify different persons, no person has the right to the payment unless the person paid was entitled to payment. Id. § 11207(b)(2) (enacted by Chapter 125). See id. § 11104(c) (enacted by Chapter 125) (definition of originator). See also Bradford Trust Co. v. Texas American Bank, 790 F.2d 407, 411 (5th Cir. 1986), Securities Fund Serv. v. American Nat’l Bank & Trust Co., 542 F. Supp. 323, 327 (N.D. Ill. 1982), aff’d, 718 F.2d 1104 (1983) (transferring institution liable where a discrepancy existed between name and number of beneficiary).

16. See CAL. COM. CODE § 1105(a)(2) (enacted by Chapter 125) (definition of originator).

17. See id. § 1105(a)(2) (enacted by Chapter 125) (definition of bank).
originator must pay for the order. An originator is not obliged to pay the order if the originator is not a bank and if the originator proves that the person identified by number was not entitled to receive the payment.

Under Chapter 125, if the execution of a payment order results in a delay of a payment to a beneficiary, the receiving bank is obliged to pay interest to either the originator or the beneficiary. Consequential damages are only recoverable under Chapter 125 if provided for in an express written agreement. Reasonable attorney fees are recoverable if a party makes a demand for compensation which a bank refuses before an action is brought on the claim.

Under Chapter 125, if a beneficiary’s bank accepts a payment order, the sender is obliged to pay to the bank the amount of the

18. Id. § 11207(c)(1) (enacted by Chapter 125). Cf. U.C.C. § 4A-207 comment 3 (1990) (losses should be allocated to bank because any bank should know how payment orders are processed and paid).

19. CAL. COM. CODE § 11207(c)(2) (enacted by Chapter 125). An originator may, however, be obliged to pay for the order if the originator’s bank proves that the originator had notice that the beneficiary bank was going to make payment on the basis of an account number. Id. See id. § 11209 (enacted by Chapter 125) (similar provisions regarding payment to beneficiary or intermediary banks by number alone).

20. See id. § 11301(a) (enacted by Chapter 125) (definition of executed). Cf. U.C.C. § 4A-301 comment 1 (1990) (term “execute” is used only with respect to payment order to a receiving bank other than the beneficiary’s bank). See generally Baxter, supra note 7, at 1449 (discussing execution of payment orders).

21. CAL. COM. CODE § 11305(a) (enacted by Chapter 125). The receiving bank is obliged to pay interest for the period of delay caused by the improper execution. Id. A receiving bank is also liable for interest losses and incidental damages for the noncompletion of funds transfers, failure to use a designated intermediary bank, or issuance of a payment order that does not comply with the payment order made by the originator. Id. § 11305(b) (enacted by Chapter 125). See id. § 11506 (enacted by Chapter 125) (methods of determining rate of interest). See also Baxter, supra note 7, at 1464 (discussing improper executions that result in delays in payment).

22. See CAL. COM. CODE § 1106, California Code Comment (West 1964) (consequential damages only allowed under California Commercial Code section 2715). See also id. § 2715 (buyer’s incidental and consequential damages).

23. Id. § 11305(c)-(d) (enacted by Chapter 125). See Evra Corp. v. Swiss Bank Corp., 673 F.2d 951, 958 (7th Cir. 1982) (consequential damages may be imposed only if the culpable bank has notice of particular circumstances giving rise to consequential damages). See generally U.C.C. § 4A-305 comment 2 (1990); Esposito, supra note 1, at 89-90 (potential liability for consequential damages where bank has notice of special circumstances). Cf. 15 U.S.C. § 1693h (1988) (financial institution liable to consumer for all damages from specified causes).

24. CAL. COM. CODE § 11305(e) (enacted by Chapter 125). Reasonable attorney’s fees are recoverable even if an agreement does not provide for damages. Id.
order. When a sender issues an instruction requiring routing through an intermediary bank and the intermediary bank is unable to complete the transfer or refund payment, the sender is still obliged to pay the receiving bank.

Commercial Transactions; industrial loan company loans--repayment period

Financial Code § 18210 (amended).
AB 3238 (Lancaster); 1990 STAT. Ch. 689

Existing law prohibits industrial loan companies from making any loans secured by real property with a repayment period greater than thirty years. In addition, Chapter 689 allows these loan companies to make loans with forty-year repayment periods, provided that the loans are backed by first trust deeds on real property. However, Chapter 689 limits loans with repayment

25. Id. § 11402(b)-(c) (enacted by Chapter 125). Payment is not due until the payment date of the order. Id. See id. § 11401 (enacted by Chapter 125) (definition of payment date). See Baxter, supra note 7, at 1459 (discussing a sender’s liability to pay the receiving bank); Nelson, Settlement Obligations and Bank Insolvency, 45 Bus. LAW. 1473, 1475 (1990) (discussing the creation of sender’s obligation to pay).

26. See CAL. COM. CODE § 11104(b) (enacted by Chapter 125) (definition of intermediary bank). See also Baxter, supra note 7, at 1455 (discussing the use of an intermediary bank). See generally Esposito, supra note 1, at 78 (intermediary banks are used in complex transactions).

27. CAL. COM. CODE § 11402(e) (enacted by Chapter 125). However, a sender is subrogated to the right of the bank that paid the intermediary bank to refund. Id.


2. Id. § 18210(a) (amended by Chapter 689). Subject to certain conditions, exceptions are allowed for nonconsumer and government-insured loans. Id. See generally Waxman, The Mortgage Banker-Industrial Loan Company: A New Exempt Company, 6 PAC. L.J. 1 (1975) (a historical overview of industrial loan companies in California).

periods greater than thirty years to an aggregate total of five percent of all outstanding loans and obligations of the loan company.⁴

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**Commercial Transactions; motor vehicles--consignment sales**

Vehicle Code §§ 266, 11729, 11730 (new).
AB 3269 (Bentley); 1990 STAT. Ch. 735
Sponsor: Department of Motor Vehicles

Existing law requires any person acting as a dealer,¹ remanufacturer,² manufacturer, or transporter³ of motor vehicles to be licensed by the Department of Motor Vehicles.⁴ Under existing law, any dealer that fraudulently fails to pay off a vehicle sold on consignment⁵ is subject to disciplinary action.⁶ Chapter 735 requires any dealer engaging in a consignment sale to execute a prescribed consignment agreement.⁷

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4. CAL. FIN. CODE § 18210(a) (amended by Chapter 689).

2. See id. § 507.8 (West 1987) (definition of remanufacturer).
3. See id. § 645 (definition of transporter).
4. Id. § 11700.
5. See id. § 266 (enacted by Chapter 735) (definition of consignment).
6. Id. § 11705 (West 1987). See Telephone interview with Bernard Lu, Chief Legal Counsel, Department of Motor Vehicles (Aug. 15, 1990) (notes on file at Pacific Law Journal); CALIFORNIA SENATE TRANSPORTATION COMMITTEE, COMMITTEE REPORT ON AB 3269, at 2 (1990) (the only disciplinary action available is an action for fraud if a dealer fails to pay off a vehicle sold on consignment).
7. CAL. VEH. CODE § 11729 (enacted by Chapter 735). A dealer’s license may be suspended or revoked if the dealer fails to comply with the terms of a consignment agreement or if the dealer fails to pay the consignor within 20 days from the date of the sale. Id. § 11730 (enacted by Chapter 735). See id. § 11730 (enacted by Chapter 735) (consignment agreement form).