

A Case Study on Risk Allocation with Respect to Altered Checks and A Proposed Rule on Applying Civil Code to Commercial Disputes

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Abstract

This article conducts a case study on how to allocate risk with respect to altered and forged checks. It first analyzes a Supreme Court Case, which involved an employee's forgery of a check payable to the employer. Applying several Code Code provisions, some judgments and scholars have taken the position that the payor bank should be held responsible for the loss. However, this article argues that this position would not only frustrate the legislative purposes of the Negotiable Instruments Code, but also cause inefficient results. Hence, when the loss is caused by a responsible employee, the Law should cast the loss on the employer. This is because the payee-employer is normally in a better position to prevent fraudulent indorsements by its own employees –through reasonable care in the selection or supervision of employees – than the payor bank. In addition, as the judgment indicates, the payor bank had exercised due care in examining the altered and forged check.

A widely recognized principle under Taiwanese Law is that the Civil Code and the Commercial Code should be integrated. It seems to follow that if the Commercial Code is silent on a commercial dispute, it is appropriate to automatically apply the provisions of Civil Code to resolve the dispute, without any modifications. As illustrated in this Case, however,

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this principle, if carried to extremes, would produce bad results. Based on the foregoing analysis, this article proposes a “modified application rule,” pursuant to which only Civil Code provisions that “fit” the legislative purposes of the Commercial Code should be applied. This article argues that, only by adopting this modified application rule, the integrity of commercial laws can be maintained.

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