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Allocation of Sender Risks in Wire Transfers: The Common Law and UCC Article 4A [Part 2]

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Allocation of sender risks in wire transfers—the common law and UCC Article 4A*

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V *Non conforming execution*

Under UCC § 4A–209(a), a receiving bank other than the beneficiary's bank accepts a payment order when it executes it. Under UCC § 4A–301(a), execution occurs when a receiving bank "issues a payment order *intended* to carry out the payment order received by the bank" (emphasis added).

In the normal course of events, the receiving bank's payment order conforms to that of the sender as it purports to carry it out. Indeed, as discussed, in relation to the amount, beneficiary's bank, beneficiary, and where applicable a designated intermediate bank, a receiving bank is required to strictly comply with the sender's instructions.

Nonetheless, the receiving bank may err in the amount, or erroneously issue an order to the wrong bank or for the benefit of the wrong beneficiary. In such cases, inasmuch as the nonconforming payment order of the receiving bank was "intended to carry out" the sender payment order, there is still acceptance by execution of the sender's order, though the sender's instructions are, in effect, not carried out and the funds transfer is not completed as originally instructed.[80]

Both at common law and under Article 4A a sender is liable to a receiving bank only to the extent of the latter's conforming execution. The sender is not responsible for a nonconforming execution of its own payment order. As a rule, the erring executing bank may then recover any overpaid or misdirected amount under the law governing mistake and restitution. Overall, in this area, UCC Article 4A clarified and refined the common law rather than superseding it altogether.

Section 4A–303 covers four types of mistakes in execution:

(1) execution by issuance of a payment order in an amount greater than the amount of the sender's order;
(2) execution of a duplicate payment order;
(3) execution by issuance of a payment order in an amount less than the amount of the sender's order; and
(4) execution by issuance of a payment order to a wrong beneficiary.

The first two cases are of overpayment, and are dealt with in subsection (a), whose operation can be demonstrated by the following example:

The receiving bank was instructed to execute a payment order for $100 000 but ended up issuing either one payment order for $1 million or two payment orders, each for $100 000. As a result, the beneficiary was overpaid. The

* This is the concluding part of this paper (see 1997 *TSAR* 15–28). It draws heavily (particularly so far as UCC Article 4A is concerned) on my book, *The Law of Electronic Funds Transfer* (1992–95).

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[80] Official Comment 3 to UCC § 4A–209.

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mistaken executing bank is bound by its payment order[81] and the increased amount must be transmitted to the beneficiary's bank. However, under subsection (a), the mistaken executing bank "is entitled to payment of the amount of the sender's order" in the original amount ($100 000), as provided by section 4A–402(c). The excess payment may be recovered by the mistaken executing bank from the beneficiary[82] to the extent allowed by the law governing mistake and restitution.

The application of the law governing mistake and restitution so as to bar recovery from the beneficiary is dealt with in Comment 2 to Section 4A–303, which speaks of the subrogation of the erring executing bank, which failed to recover from beneficiary in restitution, to the beneficiary's right against the originator. A good illustration of the position may be found in *Morgan Guaranty Trust Co v Outerbridge.*[83] In this case, the beneficiary, a solicitor, honestly thought that the duplicate payment mistakenly made into his bank account at the instruction of the erring executing bank was an additional payment from his client. On this basis, he released files to the client and thereby became unable to exercise his solicitor's lien on them. This was held to be sufficient change of position to make it inequitable to require him to repay the erring executing bank. In the court's view, the bank ought to seek its redress from the solicitor's client on the basis of an assignment in equity to the bank of the solicitor's rights to the additional payment from the client.

An even more favourable result to the beneficiary was reached by the New York court of appeals in *Banque Worms v Bank America International.*[84] In this case, the beneficiary applied, in good faith, the proceeds of a duplicate payment order, erroneously issued by the originator's bank to the beneficiary's bank, to a debt owed by the originator to the beneficiary.[85] As against the executing originator's bank, the court[86] allowed the beneficiary to keep the proceeds of

[81] UCC § 4A–402(c).

[82] UCC § 4A–303(a). The mistaken executing bank might not, however, recover from the beneficiary's bank (or any other receiving bank), contrary to *Australia & New Zealand Banking Group Ltd v Westpac Banking Corp* (n 24). In that case, in an action by the erring sending bank (the originator's bank), the beneficiary's bank successfully invoked a restitutionary defence. However, the erring sender's initial right to recover from the beneficiary's bank was not challenged.

[83] 72 OR 2d 161 (HCJ 1990). Obviously, this is a non Article 4A case.

[84] 77 NY 2d 362, 568 NYS 2d 541 (1991), on a certified question from the US court of appeals for the second circuit. For the final judgement (applying the decision of the New York court of appeals), see 928 F 2d 538 (2d cir 1991), aff'g 726 F Supp 940 (SDNY 1989).

[85] Having instructed the originator's bank to issue a payment order to a beneficiary's bank instructing payment to a beneficiary, the originator changed its mind and instructed the originator's bank to stop payment and make payment instead to another beneficiary. The originator's bank mistakenly overlooked the cancellation of the first payment order and, in addition to making payment to the beneficiary of the second payment order, also issued a payment order in favour of the beneficiary of the original payment order. The latter applied, in good faith, the proceeds of the first payment order to the originator's debt owed to that beneficiary. *Banque Worms* was thus a case of an erroneous execution of a cancelled payment order. Strictly speaking, it may not fall within the "four corners" of UCC § 4A–303, which focuses on the erroneous execution of an effective payment order. Nonetheless, in principle, the two situations are indistinguishable.

[86] The ultimate judgment for the beneficiary was given by the second circuit. See 928 F 2d 538 (2d cir 1991). However, the central opinion in the proceeding, which underlies the beneficiary's victory and was applied by the second circuit, was given by the court of appeals of New York. The ensuing discussion thus treats the judgment of the New York court of appeals as the decisive one.

the duplicate payment order, notwithstanding a lack of change of position by the beneficiary in reliance on the mistaken payment. In the court's view, the decision required resolution of two conflicting rules in the area of restitution. The first rule, under the "mistake of fact doctrine", specifically requires detrimental reliance, under which a recipient can keep the proceeds of a mistaken payment only where the payment has caused such a change in the recipient's position that it would be unjust to require a refund (or repayment). In the alternative, the second rule, known as the "discharge for value" rule, adopted by the *Restatement of Restitution* (*Second*), specifically dispenses with any change of position by the recipient who in good faith applies the proceeds to a payment of a debt owed to the recipient.[87]

Concluding that "[t]he discharge for value rule is consistent with and furthers the policy goal of finality in business transactions" so that it "may appropriately be applied in respect to electronic funds transfers",[88] the court did not require the beneficiary to demonstrate change of position. Preferring "the discharge for value rule" over the "mistake of fact doctrine", the court held for the beneficiary.[89] Since the originator was insolvent, the originator's bank absorbed the loss.

Needless to say, the risk of insolvency by an overpaid beneficiary is borne by the erring executing bank. Such a bank is not entitled to the excess payment from its own sender and is unable to recover it from the insolvent beneficiary.[90] At the same time, as demonstrated by *Banque Worms*, where an overpaid beneficiary is allowed to keep the proceeds, an erring executing bank which has not been paid by the sender bears the risk of insolvency by the sender.

The third case of an erroneous execution covered by section 4A–303 is of underpayment, which is governed by subsection (b). In this situation, the receiving bank was instructed to issue a payment order for $1 million but mistakenly issued a payment order for only $100 000. As a result, the beneficiary was underpaid. Inasmuch as a funds-transfer was carried in the lower amount, respective liabilities of participants are in that lower amount.[91]

O is thus liable to OB for the lower amount of $100 000 in which the funds transfer was carried out, and not for the original amount of $1 million. This is quite fair, since O still owes B $900 000 which O intended to pay in the first place.

[87] *Banque Worms*, 568 NYS 2d 544.

[88] *ibid* 542. Note, however, that for the purposes of Article 4A, "finality of payment" relates to the irreversibility of credit posted to the beneficiary's account (see Section 4A–405(c)) and not to the loss of a restitutionary right against the beneficiary.

[89] The court stated that, under the "discharge for value" rule: "[A] creditor of another . . . who has received from a third person any benefit in discharge of the debt . . . is under no duty to make restitution therefor, although the discharge was given by mistake of the transferor as to his interests or duties, if the transferee made no misrepresentation and did not have notice of the transferor's mistake". 568 NYS 2d 541, 544. The application of the rule to the erroneous execution setting supposes that the beneficiary is the creditor/transferee and that the executing bank is the third person/transferor. A subsequent wire-transfer case preferring the "discharge for value" rule was *Bank of Am, NTSA v Sanati*, 19 UCC Rep Serv 2d 532 (Cal App 1992), where the rule was not applied because there was no "preexisting debt or lien" to be discharged by the transfer; "a potential quasi community property in the [transferred] funds" claimed by the beneficiaries did not suffice. *Ibid* 538.

[90] See, eg, *Walker v Texas Commerce Bank* (n 20).

[91] Hereafter O is the originator, OB designates the originator's bank, IB stands for intermediary bank, BB designates beneficiary's bank, while B is the beneficiary.

The mistaken executing bank (OB) may correct the error by issuing a second payment order for the balance, in which case it is entitled to receive from the sender the entire original amount of $1 million.

In this case, following the completion of the second, correcting funds transfer, O's debt to B was discharged in full, so that O became liable to OB for the entire original amount.

The fourth case of an erroneous execution governed by section 4A–303 is that of payment to a wrong beneficiary, dealt with in subsection (c). Such a case usually arises where an originator instructs the originator's bank to issue a payment order for a beneficiary identified only by account number, and the originator's bank errs in the number;[92] instead of instructing payment to account "12345" per originator's instruction, it issues a payment order instructing payment to account "12346".[93] As a result, the intended beneficiary (account holder no 12345) is not paid at all. Payment is made to a wrong beneficiary (account holder no 12346).

In such a case, upon the completion of the funds transfer, Comment 4 to Section 4A–303 states that:

> "[T]he sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous payment order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution."

This is consistent with section 4A–402(c), under which the obligation of a sender to pay the executing receiving bank is excused "if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order".[94] In our setting, this means that while OB is obligated to IB and IB is obligated to BB, O is released from its liability to OB. OB is entitled to recover from the wrong beneficiary (account holder no 12346), subject to defences available under the law governing mistake and restitution. The rationale for O's release is quite obvious, since O still owes the full amount to the original beneficiary (account holder no 12345).

Where the mistake in the beneficiary's identity was made by an intermediary bank, all previous participants are excused from liability as well. In this case, under section 4A–303(c), O and OB are not obliged to pay. IB is entitled to recover from the wrong beneficiary (account holder 12346). O is released since OB (its receiving bank) has been released due to IB's error. Under section 4A–402(d), if O prepaid OB, O is entitled to a refund from OB, and if OB prepaid IB, OB is entitled to a refund from IB. However, prepaying O's entitlement to a refund from OB is not dependent on prepaying OB's success in actually collecting from IB. Stated otherwise, where OB prepaid IB, it is OB (and not O) which bears the risk of suspension of payments by IB. Against OB, O is entitled to a "money-back guarantee" protecting O from risk of loss resulting from

[92] The ensuing scenario is not, however, exclusive. A mistake can also relate to the beneficiary's name or any identifier.

[93] See Official Comment 4 to UCC § 4A–303. This case ought to be distinguished from the case governed by UCC § 4A–207(b), of a payment order identifying the beneficiary with a conflicting name and account number.

[94] UCC § 4A–303 generally supersedes UCC § 4A–402(c). See UCC § 4A–402(c). On this point, however, there is no inconsistency between the two provisions.

payment to the beneficiary.[95] Such protection will not assist O only where O prepaid, and it is OB itself (rather than IB) which suspended payments.

In *Clansmen Resources Ltd v Toronto Dominion Bank*,[96] the originator, a buyer of goods, instructed its bank to carry out a funds-transfer jointly to the buyer and the seller at another bank.[97] The originator's bank mistakenly instructed the beneficiary's bank to pay into the account of the seller. Payment was thus carried out to the seller's own account, contrary to the buyer's payment order.

In instructing the originator's bank to carry out the funds-transfer jointly to the buyer and seller, the buyer purported to ensure that no payment would be made to the seller unless the seller's principal delivered a written guarantee as to the fitness of the goods. Having lost control of the funds because of its bank's error, the buyer took delivery of the goods without the guarantee. The buyer then sought to challenge the debit to its account.

The buyer could not prove that it could have received the guarantee if it had some control over the money, nor could it prove the exact value of the guarantee.[98] There was no allegation that the goods were defective. Nonetheless, stating that "a banker who pays out money contrary to his customer's instructions cannot debit that money to his customer",[99] the court entered judgement for the buyer against the originator's bank for the entire amount of the buyer's payment order. The court recognized that to prevent unjust enrichment, in some cases a bank may take advantage of unauthorized payments which discharge a customer's debts, but could not find a plea of unjust enrichment by the customer made by the bank. Thus, at the expense of the bank, the buyer gained a windfall; it kept the goods without paying for them.

Had the case been governed by Section 4A–303(c), the buyer would have been released from its obligation to the originator's bank. Presumably, recovery by the originator's bank from the seller would have been barred under the law of restitution, since payment to the seller was made for good consideration (delivery of the goods). It may be argued that, based upon the law of restitution, which applies through UCC section 1–103, the originator's bank would be subrogated to the seller's position against the buyer.[100] In the final analysis, as it interacts with the law of restitution, Section 4A–303(c) ought to be construed as allowing the originator's bank to keep the funds as against the buyer, on the basis of the discharge of the buyer's debt to the seller.

In *General Elec Capital Corp v Central Bank*,[101] the intermediary bank received a payment order describing the beneficiary by both name and account number. The intermediary bank erroneously executed the payment order by

[95] See Official Comment 2 to UCC section 4A–402.
[96] (1990) 43 BCLR (2d) 273 (a non Article 4A case).
[97] The doubts expressed in *Donmar Enters v Southern Nat'l Bank*, 828 F Supp 1230 1240 (WDNC 1993) "whether a dual beneficiary arrangement is possible" and the actual holding of that case as to the propriety of payment to one designated beneficiary should not be interpreted as undermining the effectiveness and validity of such instructions where they are given in an unambiguous manner.
[98] above n 25.
[99] *ibid* 282.
[100] For the application of the law governing mistake and restitution, see text around n 89 above.
[101] 49 F 3d 280 (7th cir 1995).

omitting the account number and designating the beneficiary by name only. Although Judge Easterbrook maintained that section 4A–303(c) was applicable,[102] it is questionable whether this was truly a case of " a beneficiary different from the beneficiary of the sender's order" as contemplated by the provision. After all, though incompletely described, the beneficiary of the intermediary bank's payment order was the same entity designated in the payment order received by that bank. At the same time, this was indeed a case of an erroneous execution of the payment order by the intermediary bank, since its own payment order was not specific enough to direct the funds to the account designated by its sender. It is therefore arguable that, in principle, where on the basis of such an error payment is ultimately made by the beneficiary's bank to an account other than designated in the payment order received by the intermediary bank, Section 4A–303(c) could be applied, at least by analogy.[103] In any event, the judgment is noteworthy in treating the "discharge for value" rule pronounced by *Banque Worms*[104] as a national rule, at least in the context of Article 4A. The decision further expanded the "discharge for value" rule to protect not only a creditor of the originator but also a secured party of the beneficiary who, under the security agreement with the beneficiary, was entitled to keep the funds received from the originator.[105]

Erroneous execution by a receiving bank may cause consequential loss to the sender. In the case of overpayment, the sender's account may be debited for a larger amount than instructed and, before overpayment is discovered, other items payable from the account may be wrongfully dishonoured for lack of funds. In a case of underpayment or payment to the wrong beneficiary, the originating sender will not obtain a discharge of its debt to the beneficiary. Failure to meet payment obligations may result in loss of profitable contracts and substantial consequential loss. Section 4A–303 does not address itself to this issue. Liability for improper execution is governed by section 4A–305.[106]

All situations governed by section 4A–303, except for that of underpayment, may entail a refund obligation by the receiving bank to the sender. Thus, a receiving bank which erroneously executed the sender's payment order by issuing either a payment order in a larger amount, a duplicate payment order, or a payment order to the wrong beneficiary, is not entitled to receive payment from the sender for the excess amount in the first two cases, and for the entire amount in the third case. Having mistakenly debited the sender's account, the receiving bank is required to reimburse the sender under section 4A–402(d).[107] Whether the amount owed by the receiving bank includes interest[108] may depend upon the sender's conduct.

[102] *ibid* 283.

[103] In the facts of the case, payment was made by the beneficiary's bank to the beneficiary's account controlled by its secured party (a proceeds account) rather that to the beneficiary's general account as instructed. This was in fact a case of erroneous payment rather that erroneous execution.

[104] See n 84 above, and text which follows.

[105] In that case, payment for a debt due from the originator to the beneficiary was mistakenly directed to the proceeds account of the beneficiary instead of its general account as instructed by the originator. Applying the "discharge for value" rule, the court held that the beneficiary's secured party, who was entitled to this debt under its security agreement with the beneficiary and who controlled the proceeds account, could have retained the funds.

[106] This type of liability is quite narrow. See text at n 116–119 below.

[107] The provision is broad enough to apply and is not stated to be subject to UCC § 4A–303.

[108] The rate of interest is stated in UCC § 4A–506.

Under section 4A–304, therefore, a sender which receives notification from the receiving bank of the execution of his payment order and of the resulting debit to its account

> "has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender".[109]

Failure to perform that duty results in a loss of interest "on any amount refundable to the sender . . . for the period before the bank learns of the execution error." No other amount is recovered by the bank from the sender for breach of the sender's duty under this section.[110]

The right to obtain a refund may be lost, however, under section 4A–505, which requires a customer to notify the bank of any objection to a debit to its account within one year after the customer receives notification from the bank "reasonably identifying the order" to which the debit relates. Thereafter "the customer is precluded from asserting that the bank is not entitled to retain payment".[111]

VI *Improper execution and noncompletion: scope of damages and allocation of liability*

(i) Scope of damages

In the US, prior to UCC Article 4A, in *Evra v Swiss Bank*,[112] the originator sued a negligent intermediary bank for substantial consequential damages incurred due to the loss of a profitable contract. In this case, the underlying contract required the originator to make punctual payment to the beneficiary and further entitled the beneficiary to terminate the contract upon a breach by the originator of the punctual payment term. Due to its own negligence, the intermediary bank failed to issue its payment order to the beneficiary's bank. As a result, payment to the beneficiary was not timeously made and the beneficiary terminated the contract. The consequential damages incurred by the failure to make a $27 000 transfer were in the sum of $2,1 million.

Ultimately, judgment was given against the originator on the basis of lack of foreseeability. Particular reliance was put on the rule in *Hadley v Baxendale*,[113] an English precedent, under which "consequential damages, will not be awarded unless the defendant was put on notice of the special circumstances giving rise to them".[114] In the facts of the case, no such notice was given by the originator to its own bank. Obviously, the negligent intermediary was without notice as to the special circumstances of the case.

[109] Under UCC § 4A 1–204(1), "any time which is not manifestly unreasonable may be fixed by agreement" as "reasonable time". Compare with UCC § 4A–204 and 4A–205(b).
[110] Consistency with UCC § 4A–204 is expressly indicated by the Official Comment to UCC § 4A–304.
[111] The same is equally true in connection with refunds under UCC § 4A–204.
[112] 673 F 2d 951 (7th cir 1982), *rvr'g* 522 F Supp 820 (ND Ill. 1981).
[113] (1854), 9 Ex 341, 156 Eng Rep 145.
[114] (n 112) 955–956. The *Evra* decision was rejected by UCC § 4A–305.

It is very likely that, in an action of the originator against his bank, a similar result will be obtained under English common law as well. That is, consequential damages are recoverable, provided they are foreseeable. Special circumstances, such as the potential loss of a profitable contract, must be advised by the originator to its bank (which in turn, must pass on the information). Otherwise, consequential damages are not recoverable.[115]

Under Article 4A, the liability of a receiving bank for late or improper execution, as well as for non execution in breach of contract, is limited to interest losses, expenses,[116] and in some circumstances, reasonable attorney fees. In obvious departure from the *Evra* case, there is no liability for consequential loss, even foreseeable, including exchange losses, or loss of a profitable contract due to the failure to meet a contractual payment deadline, except by express written contract.[117] In the view of the drafters,[118] this rule is rationalized on the need "to effect payment at low cost and great speed".[119]

(ii) Allocation of liability: the common law

At common law, as between the originator and the beneficiary, the risk of a delay or loss occurring at a sending bank (namely, the originator's and an intermediary bank) falls on the originator. This is so since the originator's bank is an agent of the originator and each intermediary bank is an agent of its sending bank. The originator may then shift the loss, created due to the default of a sending bank, on to the originator's bank which is responsible for its own default as well as for default by an intermediary bank. Recovery is available to each sender from its receiving bank, until ultimately the loss falls on the defaulting intermediary bank.

As for the risk of delay or loss occurring at the beneficiary's bank, the legal position in the common law is not as straight forward. According to *Chitty on Contracts*, it is indisputable that the beneficiary's bank is engaged as an agent. However, as between the originator and beneficiary, "it is less certain who is to be regarded as [its] principal".[120]

In the US, prior to UCC Article 4A, *Securities Funds Ser Inc v Am Nat'l Bank & Trust Co*[121] held that the beneficiary's bank is to be treated as a subagent, directly liable to the originator[122] for the failure to notice in the text of the payment order it had received that the destination account did not

[115] This will be consistent with the rule requiring special notice to be given to a carrier of goods in order to charge him with liability for consequential damages for late (or non) delivery. See eg in Canada *BDC Ltd v Hofstrand Farms Ltd* (1986), 26 DLR (4th) 1 (SCC), commented on by Blom 1986–87 *Can Bus LJ* 43.

[116] Expenses may not be recovered in the case of mere delay. See UCC § 4A–305(a).

[117] UCC § 4A–305.

[118] Official Comment 2 to UCC § 4A–305.

[119] In general, the Model Law followed suit, but with more moderation. Thus, Article 18 specifically does not exclude "any remedy that may exist when a bank has improperly executed, or failed to execute, a payment order (a) *with specific intent to cause loss*, or (b) *recklessly and with actual knowledge that loss would be likely to result*" (emphasis added). Mere negligence, and even gross negligence, will not suffice.

[120] (1989) II *Specific Contracts*, §2956 (Bills of Exchange and Banking by Ellinger).

[121] above n 31.

[122] In English law, even if the beneficiary's bank is a subagent of the originator, in the absence of privity between them, no direct liability lies.

belong to the named beneficiary.[123] However, the prevailing view in England is that the beneficiary's bank acts as an agent for the beneficiary with a limited authority[124] to receive payment and credit it to the beneficiary's account.[125] Support for this view also exists in some pre-Article 4A American jurisprudence.[126] In this context, the authority given to the beneficiary's bank by the beneficiary may be actual or implied, on the basis of their account agreement. Alternatively, authority may be apparent, on the basis of the account information furnished by the beneficiary to the originator in connection with their agreement as the mode of payment.[127]

To the extent that the beneficiary's bank is to be treated as the beneficiary's agent, the risk of delay or loss occurring at the bank is allocated to the beneficiary. In turn, the latter may shift it to its defaulting bank.

Nonetheless, it is not universally accepted under the common law that the beneficiary's bank acts as the beneficiary's agent. It has been argued that

> "in the same way that it is inappropriate to say that the bank receives money paid by the customer into his account as agent for the customer it is also inappropriate to say that the bank receives money paid by a third party for the account of the customer as agent for the customer".[128]

Rather, in a credit transfer, "[all] banks . . . *including the [beneficiary's] bank*, are the agents or sub-agents of the [originator]".[129] Accordingly, in a credit transfer, "the [beneficiary] agrees not that the [beneficiary's] bank should receive the payment as agent but that liability of the [originator] may be discharged by constituting the bank a debtor of the [beneficiary] in respect of the sum payable".[130]

It follows, under the foregoing view, that the risk of delay or loss occurring at the beneficiary's bank falls at common law on the originator. Obviously, the originator may pursue his remedies indirectly against the defaulting beneficiary's bank, by recovering from the originator's bank which will then pass the loss along the chain of participating banks, onwards to the beneficiary's bank, as its subagent. It is nonetheless submitted that, having selected the beneficiary's bank, even under this analysis, the beneficiary (and not the originator) ought to bear the risk of loss incurred due to the insolvency of the beneficiary's bank.

[123] Alternatively, the beneficiary's bank was held liable to the originator either in negligence or as a third party beneficiary of the undertaking of the beneficiary's bank to deliver funds as directed. In the facts of the case, a dishonest employee of the originator generated an authorized payment order naming a legitimate beneficiary and an account number belonging not to the named beneficiary but to the dishonest employee's innocent creditor. The dishonest employee counted on the automated processing at the beneficiary's bank that would direct funds to the account without matching the number with the name. *Securities* was rejected by UCC § 4A–207(b)(1).

[124] The authority is not to receive notices, as well as to make commercial decisions (such as to receive late payments), on the beneficiary's behalf. See eg *Midland Bank Ltd v Conway Corp* 1965 1 WLR 116 and *Mardorf Peach v Attica Sea Carriers, The Laconia* 1977 1 All ER 545 (HL), judgments of Lord Wilberforce (with whom Lord Simon agreed) and Lord Salmon.

[125] *The Laconia, ibid.* See also *Royal Products* (n 14) 198–199 and 210–203, as well as Chitty (n 120) § 2956. For the same result in Australia, see *ANZ v Westpac* (n 24).

[126] See eg *Delbrueck* (n 8) 1051–1052.

[127] For this point, see Chitty (n 120) § 2956.

[128] King "The receiving bank's role in credit transfer transactions" 1982 *MLR* 369 373.

[129] *ibid* 379 — emphasis added.

[130] *ibid* 381.

(iii) Allocation of liability: UCC Article 4A

Under Article 4A as between the originator and the beneficiary, the risk of delay or loss occurring at a bank other than that of the beneficiary falls on the originator. This is so since until acceptance by the beneficiary's bank the underlying originator's debt to the beneficiary subsists. When the transfer is not completed by the acceptance of the beneficiary's bank, namely when loss occurs, the originator usually benefits from the money back guarantee rule so that the ultimate party with a remedy against the bank where loss occurred is the immediate sender to the bank. With respect to delay, the originator has a direct remedy against the defaulting bank, regardless of whether they are immediate parties in the transfer chain, though only for interest losses, expenses and in some circumstances, reasonable attorney's fees. Interest losses for late execution may be recovered from the defaulting bank directly by the beneficiary.[131] By allowing a direct remedy and bypassing the action against the originator who would then have a recourse from the defaulting bank, this rule avoids the circuity of actions.

As indicated, there is no recovery under Article 4A for consequential loss.[132] On the other hand, liability for loss, under the money-back guarantee rule, is absolute and not dependent on the breach of any particular duty by the receiving bank. Likewise, when delay occurs due to the failure to act timeously, liability is absolute. Obviously, however, breach by the receiving bank of its obligations in executing the payment order,[133] causing loss or delay, gives rise to recovery of interest, expenses and attorney's fees, as applicable.

Vis-à-vis the originator, an event causing delay or loss occurring after the acceptance by the beneficiary's bank is at the beneficiary's risk. This is so since acceptance by the beneficiary's bank discharges the originator's debt to the beneficiary and makes the beneficiary's bank accountable to the beneficiary. Consequential foreseeable damages may be recovered by the beneficiary from the beneficiary's bank.

In principle, the risk of delay or loss occurring at the beneficiary's bank prior to acceptance by that bank falls under Article 4A on the originator. Where the beneficiary has an account with the beneficiary's bank this risk is of an extremely short duration since the sender's payment would constitute the acceptance of the beneficiary's bank. In any event, where *loss* occurs at the beneficiary's bank prior to its acceptance, the originator benefits from the money-back guarantee rule. There seems to be no remedy available to the originator in the case of a preacceptance *delay* at the beneficiary's bank.

VII *Misdescription of participants*

A payment order must identify the beneficiary, as well as the beneficiary's bank. It may further identify an intermediary bank. A beneficiary may be identified by name, bank account number, or other identification. A bank may be identified by name or identifying number. Misdescription may lead to diversion of payment orders or funds, so that the originator's debt to the beneficiary is not discharged.

[131] UCC § 4A–305.
[132] *ibid.*
[133] under UCC § 4A–302.

One case of misdescription is where the name and number identify two persons (or banks). The ambiguity in the instructions could have been generated either by mistake or by fraud. A fraudulent design may involve a payment order generated by a dishonest insider in the originator's organization. The payment order appears to instruct payment to a legitimate creditor of the originator, or even to the originator itself, at an account with the beneficiary's bank. The payment order identifies the beneficiary by name and account number. In fact, the account does not belong to the named beneficiary but rather to the fraudulent insider, to an accomplice, or even to a genuine unsuspecting creditor of the insider. Through the use of either the originator or of one of its creditors as a named beneficiary, the payment order does not raise any suspicion in the originator's organization. The dishonest insider counts on automated processing at the beneficiary's bank, which would overlook the named beneficiary and misdirect the funds into the target destination account.[134] Frequently, an absconding perpetrator and innocent recipient (the latter under the law governing mistake and restitution) are not promising defendants so that the loss may be allocated to an innocent participant in the funds transfer that breached a duty.

In *Bradford Trust Co v Texas Am Bank*,[135] loss was allocated to the originator's bank. That bank did not follow its own internal procedures to verify the genuineness of an unauthorized payment order. The payment order identified the destination account at the beneficiary's bank by number as well as by the name of the purported originator. In fact, the numbered account belonged to the imposter's innocent creditor. This negligence of the originator's bank, and not the failure by the beneficiary's bank to notice the discrepancy between name and number, was held to be the ultimate cause of the loss. However, where the originator's payment order was genuine, the standard risk bearer under pre-Article 4A American common law was the beneficiary's bank. The leading case is *Securities Fund Ser Inc v Am Nat'l Bank & Trust Co*[136] In that case, the beneficiary's bank was required to exercise care so as to notice a discrepancy between the account number and the beneficiary's name. Having failed to do so, it became liable to the originator. The originator could also sue the beneficiary's bank as a third party beneficiary of the undertaking by the beneficiary's bank to deliver funds as directed, as well as a principal who was injured by the negligence of his subagent (the beneficiary's bank).

Article 4A departed from this position. Under 4A–207(b)(1), where a payment order identifies the beneficiary by name and number, the beneficiary's bank acting without knowledge of any inconsistency may rely on the number alone. The loss thus falls on the originator. However, under § 4A–207(c) where a nonbank originator had no notice that payment might be made by the beneficiary's bank solely on the basis of the number, loss is shifted to the originator's bank. Under § 4A–207(d), recovery from the person identified by number who was not entitled to receive payment by the originator, is available (either to the originator or to the originator's bank, as the case may be) to the extent allowed under the law of mistake and restitution.

[134] *Cf*, for example, *Securities Fund Ser Inc v Am Nat'l Bank & Trust Co* (n 31).
[135] 790 F 2d 407 (5th cir 1986).
[136] n 31.

UCC § 4A–207(b)(1) does not apply where the beneficiary's bank "pays the person identified by name or knows that the name and number identify different persons". In such cases, under Section 4A–207(b)(2), "no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator. . .". No acceptance can occur where "no person has rights as beneficiary".

Arguably, subsection (b)(1) may also be broad enough to protect a beneficiary's bank that does not act automatically on the basis of the account number, if the bank paid the designated account holder without knowledge of the discrepancy between the name and number. Thus, in *Royal Bank of Canada v Stangl*,[137] the beneficiary's bank received a payment order directing payment at a designated branch (hereinafter "the destination branch") to *Lynwil* International Trading Inc, account no 916327. This account, however, belonged to another entity, Unitec. Unitec had several accounts at that branch, one of which (no 627902) was in the name of *Linwell* International. Having consulted Unitec, the destination branch deposited the funds into one of Unitec's accounts. In fact, the intended beneficiary was *Linwil*, a different entity, that had no account at the destination branch.

In a non Article 4A jurisdiction, judgment was given in favour of the intermediary bank against both the beneficiary's bank and Unitec. Unitec failed to assert any restitutionary defence to the action for the recovery of the mistaken payment. Under such circumstances, both the common law and Article 4A warrant the judgment against it. Judgment was given against the beneficiary's bank on the basis of its negligence. Elsewhere I argued that inasmuch as it was plausible for the beneficiary's bank to believe that the beneficiary's name was misspelled and not that it referred to someone other than the account holder, this aspect of the decision is not defensible.[138]

At first blush, the application of Section 4A–207(b) to this situation may seem unclear. Indeed, the beneficiary's bank might have assumed that "Linwil" was a misspelling of "Lynwell," so that the bank "[did] not know the name and number refer[red] to different persons", as envisaged by subsection (b)(1). Nonetheless, was payment made in reliance on the number (subsection (b)(1)), or to "the person [mistakenly] identified by name" (subsection (b)(2))? This may be a question of fact. However, inasmuch as payment was made to the holder of account no 916327 and, in the absence of knowledge of the discrepancy between the name and number, the beneficiary's bank should be protected under subsection (b)(1).

Article 4A deals with two other situations of participant misdescription. First, under Section 4A–208, where a payment order identifies an intermediary or beneficiary's bank by number or name and number, the receiving bank acting without knowledge of any inconsistency may act either on the number or the name. Allocation of loss is then determined under the rules applicable to erroneous execution.

Second, Section 4A–207(a) deals with a payment order received by the beneficiary's bank containing "the name, bank account number, or other identification of the beneficiary" which "refers to a nonexistent or

[137] (1992), 32 ACWS (3d) 17 (Ont Ct (Gen Div)) [092/066/089–19]. While on appeal, the case was settled.

[138] Comment 1994–95 *Can Bus LJ* 435.

unidentifiable person or account". In such a case, "no person has rights as a beneficiary of the order", so that the funds transfer cannot be completed. Since completion of a funds transfer is marked by the acceptance by the beneficiary's bank, section 4A–207(a) recognizes that "acceptance of the order cannot occur". Consequently, since the transfer is not completed by acceptance by the beneficiary's bank,[139] each sender is excused from its obligation to pay the payment order under Section 4A–402(c).[140]

Section 4A–207 applies when "the name, bank account number, or other identification of the beneficiary" appears in a payment order which "refers to a nonexistent or unidentifiable person or account". Under the language of Section 4A–207(a), "nonexistent" may mean an objective fact, though presumably a payment order for the benefit of a beneficiary who has died will not fall into Section 4A–207(a), notwithstanding the "nonexistence" of the beneficiary.[141] "Unidentifiable" arguably refers to the standard of normal banking practices as maintained by a reasonable banker of the type of the beneficiary's bank. In the simplest case, an instruction which does not direct payment to any person or account "refers to [an] . . . unidentifiable person or account" within the meaning of Section 4A–207(a).

For Section 4A–207(a) to apply, the beneficiary must be either nonexistent or unidentifiable. Technically, a nonlegal entity can be identifiable, though legally it is nonexistent. It is, however, questionable whether subsection (a) is meant to apply to such a case. It is also uncertain whether subsection (a) purports to apply to a situation where the beneficiary is identified by name only and there are at least two persons meeting the description.[142] Technically, this is a case of an existent but unidentifiable beneficiary. It is arguable, however, that subsection (a) covers only the case where, from the "four corners" of the instruction, the beneficiary's bank, acting as a reasonable banker, cannot find any identifiable and existing person or account to whom payment would carry out the sender's intent as expressed in the payment order.

In general, whether "the name, bank account number, or other identification of the beneficiary" in a payment order refers to "a nonexistent or unidentifiable person or account" should be examined as a whole and not by breaking down the phrases into their various components. Thus, if the name is unidentifiable but the account number is identifiable or *vice versa*, Section 4A–207(a) does not apply. For example, a payment order instructing payment into an existing and identifiable account of a nonexistent or unidentifiable person does not fall within the scope of Section 4A–207(a) and may be accepted by the beneficiary's bank. Such would be the case where an account is opened (either mistakenly or fraudulently) in the name of a nonexistent entity. In this case, subsection (a) should not bar the *bona fide* acceptance by the beneficiary's bank solely on the basis of the account number. This is confirmed by Section 4A–207(b), dealing with the case of a conflicting name and account number,

[139] UCC § 4A–104(a).

[140] See Official Comment 1 to UCC § 4A–207.

[141] The effect of the sender's death is governed by UCC § 4A–211(g). Where the beneficiary dies before the issuance of the payment order and acceptance by payment into that beneficiary's account, Section 4A–207(a) may apply. This seems to be the assumption made in dictum in *Retirement Systems v Kralman* 867 P 2d 643, 648 (Wash App Div 3 1994).

[142] See *Nicoletti v Bank of Los Banos* 214 P 51 (Cal 1923).

which supersedes Section 4A–207(a).[143] However, the proposed interpretation of subsection (a) also follows from the objective underlying it. The provision does not amount to a license given to a beneficiary's bank that has not rejected a payment order not to exercise due diligence in identifying the beneficiary. Rather, it is a shield in situations where, from the information contained in the payment order, the beneficiary is truly unidentifiable. Where the beneficiary is existent and identifiable, "acceptance" by the beneficiary's bank may occur, notwithstanding lack of correct identification.[144]

It was held in *Donmar Enterprises v Southern National Bank*[145] that Section 4A–207(a) requires a beneficiary's bank to reject a payment order when it does not specify "at least one identifiable beneficiary". Identification can be made "in any number of ways including the plain wording of the [payment] order or the circumstances of the transfer". In this case, the beneficiary's bank received two payment orders from the originator's bank, specifying the sum stating "ATT INTL DIV RE STC DONMAR TRANS CODE 102–1011". The beneficiary's bank directed the funds to the account of its customer Stephen's Trading Co ("STC"), at least in the second funds transfer, on the basis of that customer's directions. Donmar was not a customer of the beneficiary's bank. The court found that "the STC/Donmar language" in the payment order identified these two as the parties to the transaction and made clear "within the context of the transaction that STC was the beneficiary of the money and that Donmar was the payor". Even assuming that both parties were named as beneficiaries, "Stephen's Trading Co was clearly an identifiable beneficiary whether measured objectively or subjectively". In the final analysis, "there was admittedly at least one identifiable beneficiary, and since section 4A–207 requires no more, the [beneficiary's bank] was not required to refuse the transfer. . .".

The payment orders could have easily been construed as designating STC and Donmar as joint beneficiaries,[146] as argued by the originator Donmar. However, taking into account the ambiguity or insufficiency of the language of the payment order, the course of action taken by the beneficiary's bank was adequately reasonable to afford it full protection. Nonetheless, as a matter of statutory interpretation, by themselves, ambiguous instructions should not be assumed sufficient to render the beneficiary "unidentifiable" under Section 4A–207(a). For the provision to apply, no identification could have been made even under any reasonable interpretation of the ambiguous instructions. Unfortunately, while reaching the correct result, the court did not elaborate on this point.

In *USA v BCCI Holdings (Luxemburg) SA*,[147] UBAF Bank in London

[143] See UCC § 4A–207(a), (b). On its own terms, subsection (a) is stated to be subject to subsection (b).

[144] See Official Comment 6 to UCC § 4A–209.

[145] 828 F Supp 1230, 1239–40 (WDNC 1993), aff'd 64 F 3d 944 (4th cir 1995).

[146] In which case, inasmuch as Donmar had no account with the beneficiary's bank, no acceptance could have occurred by payment to the beneficiary's bank under Section 4A–209(b) and (c).

[147] Criminal No 91–0665 (JHG), US District court for the District of Columbia, August 22, 1995, (unreported). This was a petition of UBAF for recovery of funds forfeited by the United States government in connection with criminal charges brought against various BCCI entities. UBAF's petition challenged the legal title to the funds of BCCI SA, arguing lack of acceptance by BankAmerica of a payment order, allegedly issued to a "nonexistent or unidentifiable" beneficiary. I acted as an expert witness for the United States, against whom judgment was given.

purported to wire payment into BCC (E)'s account with BankAmerica in New York. Due to a clerical error at UBAF, the beneficiary was identified in the payment order as "Bk Credit & Commerce (GC) Abu Dh". No account under such or closely similar name existed at BankAmerica. Since the payment order[148] did not specify a bank account or other numerical identifier, BankAmerica had to process it manually. It ultimately credited the money into account no 86052 of BCCI SA, as a "beneficiary's bank", noting BCC (GC) as the beneficiary, and advising BCCI SA accordingly.[149]

The court conceded that the association between the BCCI SA Abu Dhabi account and a payment order referencing GC, for Grand Cayman, "was not taken out of the air". BCCI SA had a treasury (or cash management) division which managed the surplus funds of the various BCCI entities and branches. Account 86052 was used by that division to receive and transfer funds owned by the Grand Cayman Treasury, to which the surplus liquidity of the BCCI entities worldwide was transferred daily.

Nevertheless, the court concluded that the beneficiary in the payment order received by BankAmerica was both "nonexistent" and "unidentifiable" so that under UCC § 4A–207(a) no acceptance occurred. "Nonexistence" was rationalized on the absence in BankAmerica of any BCC account including "GC" or "Grand Cayman". Specifically, the court explained that due to the disjunctive wording of § 4A–207(a), namely, due to the reference to "a non-existent *or* unidentifiable person or account" (emphasis added) in the provision, "nonexistence" could not be saved by "identifiablity", or the belief thereof by the beneficiary's bank. In any event, the court went on to conclude that in the facts of the case, the beneficiary was also "unidentifiable", since BankAmerica did not take reasonable steps to identify the intended beneficiary. The unreasonableness of BankAmerica's conduct was predicated, according to the court, on the unusual situation on the day the payment order was received by BankAmerica, resulting from the earlier seizure of account no 86052, as part of BCCI's shutdown by the regulators on that day. According to the court,

> "[t]his need for special treatment was exacerbated by the history of confusion between the BCCI SA and BCC(E) accounts at BankAmerica, and the fact that BankAmerica could have placed the money in a virtually risk-free 'suspense' account pending a determination of the beneficiary of the payment order".

[148] In fact, the payment order received by BankAmerica was CHIPS payment order, issued by UBAF's New York correspondent, Bankers Trust, acting in the funds transfer as an intermediary bank. The content of Bankers Trust's payment order fully conformed to that issued to it by UBAF.

[149] Judgment was however premised on BankAmerica acting throughout as a beneficiary's bank, according to the payment order it received. That is, BankAmerica must have treated account no 86052 as belonging, at least beneficially, to the designated beneficiary. Alternatively, having identified the Grand Cayman Treasury as the beneficiary, for whom it held no account, BankAmerica might be regarded as having proceeded to pay it by issuing a payment order to BCCI SA, where to its knowledge, the Grand Cayman Treasury had an account. Under this alternative, BCCI SA might not have been in a position to accept BankAmerica's payment order, due to the closure of its New York operations. See UCC § 4A–210(c), under which suspension of payments by a receiving bank is tantamount to the rejection of all unaccepted payment orders issued to it. Inasmuch as the court found that no acceptance occurred under the first alternative, it did not pursue the second, noting only that "[b]ecause Article 4A treats separate branches of banks as distinct banks and the Abu Dhabi branch of BCCI SA was not shut down until [several days later], it is unclear whether BCCI SA Abu Dhabi had 'suspend[ed] payments' [on the day BankAmerica credited its account]".

There are several difficulties with the construction and application of Section 4A–207(a) by the court. First, there is no reason why "nonexistence" ought to be confined solely by reference to the list of account holders at the beneficiary's bank. A nonaccount holder, non customer, may well be "existent". In the facts of the case, there was an "existent" Grand Cayman BCC unit whose funds were received and transferred through account 86052. Moreover, the name "Bk Credit & Commerce (GC) Abu Dh" was selected at UBAF from a particular beneficiary data base. True, in the facts of the case, the particular selection was mistaken; this does not render the selected beneficiary nonexistent. There is no indication, indeed, that UBAF's database was all that unreliable, to include nonexistent persons.

Second, too much emphasis was put on the disjunctive language of Section 4A–207(a). As already suggested, to avoid arbitrary results, whether "the name, bank account number, or other identification of the beneficiary" in a payment order refers to a "nonexistent or unidentifiable person or account" should be examined as a whole and not by breaking down the phrases into their various components. Accordingly, in my view, "nonexistence" comes into play only for an "identifiable" beneficiary, in situations where notwithstanding proper identification, no reasonable course of action can be taken by the bank. Such is the case for a payment order directing payment to a historical figure, such as Napoleon Bonaparte. Obviously, he is "identifiable"; nonetheless, inasmuch as the beneficiary's bank is unable to carry payment to him, no acceptance could occur due to his "nonexistence". However, the provision ought not to apply to a "nonexistent" but "identifiable" beneficiary, where a reasonable course of action to carry the originator's intent, as expressed in the payment order issued to the beneficiary's bank, is available to the latter. For example, such could be the case where the named beneficiary just died or is an unincorporated organization. In sum "identifiablity" may or may not save "nonexistence", and the disjunctive language of Section 4A–207(a) ought not to be determinative. As applied to the facts of our case, even if the named beneficiary was "nonexistent", in the technical sense, surely its identification as the Grand Cayman Treasury, coupled with BankAmerica's ability to carry out payment to it, ought to have excluded the case from the coverage of the provision.

This takes us to the issue of "identifiability" in Section 4A–207(a). I am in full agreement with the court that for an "ambiguous" beneficiary, reasonable identification is required. However, I have difficulties in sharing the court's conclusion that BankAmerica did not take reasonable steps to identify the intended beneficiary. As the court stated, manual processing of payment orders not including a numerical identifier was a common occurrence at BankAmerica, in which case, while no written guidelines existed, "several steps were commonly taken . . . BankAmerica personnel could rely on directories, lists of account holders, BankAmerica policies and experience". There was no indication that all this was not pursued. Neither closure of BCCI SA[150] on that

[150] Even if crediting payment to a frozen account of an insolvent bank may be wrongful (as in *Sheerbonnet v American Express Bank* 905 F Supp 127 (SD NY 1995)), the identification of that account by the beneficiary's bank (as opposed to its crediting) does not become thereby more unreasonable.

day nor the past confusion between BCCI SA and BCC(E)[151] rendered the beneficiary on the payment order issued to BankAmerica less "identifiable" and its identification process less reasonable.

In the final analysis, the purpose of Section 4A–207(a) is to protect the originator from an unwarranted or unreasonable identification by a beneficiary's bank handling an ambiguous payment order, and not from the consequences of an internal mistake at the originator's end in the selection of the beneficiary, as seems to have been done in *USA v BCCI Holdings (Luxemburg), SA*. In any event, it should be stressed, an action in restitution is available to a mistaken sender, whether against the beneficiary's bank, where Section 4A–207(a) applies, or against the unintended beneficiary, as in the case of any other erroneous payment order.[152]

Conclusion

In principle, a person is responsible for an authorized or verified payment order sent on his behalf. *Vis-à-vis* a receiving bank, a sender is bound by the content of his payment order. Nonconforming execution by a receiving bank does not bind the sender. An erring sender may recover an unintended payment under the law of mistake and restitution.

Improper execution and noncompletion of a wire transfer entitles the originator to recover foreseeable consequential losses at common law but not under UCC Article 4A. In general, a sender may sue only his own receiving bank. At common law but not under Article 4A an originator's bank is usually also liable for the default of an intermediary bank. A partial exception under Article 4A is the money-back guarantee rule, under which the originator is usually entitled to receive from his bank the sum of a funds transfer that has been aborted due to the suspension of payment by an intermediary bank.

In principle, a sender is responsible in the case of misdescription of a participant in his payment order. Where the payment order designates the beneficiary by name and account number and the designated account does not belong to the named beneficiary, the beneficiary's bank has no duty to discern the ambiguity and may deposit the funds into the designated account, provided it is not aware of the inconsistency. However, an erring originator is protected in the case of a nonexistent or unidentifiable beneficiary.

SAMEVATTING

DIE VERDELING VAN OORDRAGGEWERRISIKO'S BY KREDIETOORDRAGTE — DIE GEMENEREG EN ARTIKEL 4A VAN DIE UCC

'n Kredietoordrag bewerkstellig die oordrag van fondse van die oordraggewer deur middel van sy bank na die begunstigde. Dit behels dat die rekening van die oordraggewer eerste gedebiteer word en die begunstigde se rekening daarna gekrediteer word: In 'n sekere sin word die fondse vanaf die

[151] After all, there was nothing in the payment order to alert BankAmerica to the possibility that BCC(E) might have been involved. As for the court's suggestion that the money be put into a suspense account at BankAmerica, this might not have precluded acceptance by receipt of payment under Section 4A–209(b)(2) which would have triggered an obligation to pay the beneficiary under Section 4A–404.

[152] On the facts of the case, the latter action (under Section 4A–205) would have been inadequate in the context of the forfeiture proceedings, where UBAF's recovery must have been premised on its legal interest in the funds, and its absence in the hands of BCCI SA.

rekening van die oordraggewer "gedruk" tot by die rekening van die begunstigde. By 'n debietoordrag is dinge anders: hier word die fondse "getrek" vanaf die rekening van die oordraggewer. Dikwels word hierdie kredietoordragte bewerkstellig deur die tussenkoms van intermediêre banke wat die opdrag ontvang en, in 'n sekere sin, "aanstuur". Hierdie oordragte kan ook binne die takstruktuur van die versendingsbank geskied en mag verder die dienste van 'n gemeenskaplike bank of verrekeningshuis behels. Die opdrag om 'n kredietoordrag te bewerkstellig kan in verskeie vorme gegee word en word, indien nie skriftelik nie, meesal elektronies gegee. Omdat die opdrag in laasgenoemde geval aanvanklik deur 'n "draad" ("wire") versend is, word op Engels van 'n "wiretransfer" gepraat. Die meeste lande het 'n kredietoorplasingsmeganisme vir bedrae wat besonder hoog is ("HWOS" = "hoëwaarde-oordragstelsel" of "large value transfer system" = "LVTS"). In die verlede is HWOS oorsee meesal per lugpos, kabel of teleks gedoen maar die SWIFT netwerk het toenemend hierdie besigheid oorgeneem. Die ontwikkeling van hierdie betalingsvorme het die behoefte aan verrekeningshuise laat ontstaan en daarby verskillende vorme van verrekening te voorskyn gebring (naamlik die net net ("multilaterial net") stelsel en die grosbasisstelsel. Hierdie artikel ontleed die risiko's verbonde aan kredietoordragte en in die besonder die regsbetrekkinge by kredietoordragte, die bepalings van artikel 4A van die UCC en die gemeenregtellike posisie en in die besonder kritiese vrae soos gevalle waar diskrepansies tussen instruksies en oordragte voorkom en die verhaalbaarheid van vervolgskade.