Chapter

Three

The Allocation of Losses Resulting from Forgeries, Unauthorized Telechecks and Alterations

In this part, we will examine how the Code allocates losses caused by check fraud. We will first review the basic rules for apportioning losses caused by forgeries, unauthorized telechecks and alterations.

Here we will review how the warranty sections work to shift loss. We will then turn to the exceptions from the basic loss allocation scheme.

A. Forgeries

Section 4-401 codifies the most basic rule employed in apportioning losses caused by check frauds. A bank cannot pay a check drawn on its customer's account unless the item is “properly payable.” Remember that a forged signature does not operate as the signature of the person named in the forgery. An unauthorized or forged signature is wholly inoperative except as the signature of the signer. § 3-403. It follows from this that a check should not be paid if any necessary signature on the check is unauthorized or forged. The drawer's genuine signature is necessary, after all, because it is the drawer's account upon which the check is drawn. The bank should not be paying an instrument drawn by anyone else. Similarly, if the payee’s signature is forged, the bank paying the item is not following the drawer’s direction. The drawer instructed the bank to pay to the order of the named payee. The bank paying against a forged indorsement is not following the payee’s direction but the forger’s. The major difference between the case of a forged drawer’s signature and a forged indorsement concerns the ability of the payor bank to recover for breach of warranty.

Suppose a pickpocket lifts a blank check, forges the drawer’s signature and deposits it in his own bank account. The pickpocket’s bank presents and obtains payment of the instrument. The drawer, in this example, would be entitled under § 4-401 to have the payor bank recredit his or her
account. The check was not properly payable. Once the payor bank recredits the account, it would probably bear the loss. Under the rule of Price v. Neal preserved in the limited presentment warranty of § 4-208(3), the presenting bank warranted only that it had no knowledge of the forgery. Chances are good that the pickpocket has withdrawn the sums credited against the check. Therefore, no restitution theory would help the payor bank. The presenting bank has given value for the instrument in good faith. Unless the payor bank can find and recover the sums from the pickpocket, a dim prospect, it will bear the loss caused by paying against a forgery of its customer’s signature.

Contrast the case where a thief grabs a check from the payee, forges the payee’s indorsement and deposits the check in a bank that presents it and obtains payment. Once again, the item is not properly payable. Because the check was payable to the payee’s order, the payee’s indorsement was necessary for any further negotiation of the instrument. The thief’s forgery is not the payee’s signature and cannot pass title to the instrument. The payor bank must recredit the drawer’s account. In this instance, however, the payor bank has a remedy. The presenting bank breached the warranty that it was a person entitled to enforce the instrument, the warranty of good title. § 4-208(a)(1). The payor bank can shift the loss to the presenting bank, which will be left with its claim against the thief.

**B. Unauthorized Telechecks**

The warranties added to the Code in 2002 provide a limited exception to the rule of Price v. Neal when unauthorized telechecks have been processed for collection and paid. Remember both the presentment and transfer warranties now include a guaranty that all remotely created consumer items have indeed been authorized by the person who holds the account on which they are drawn. §§ 3-416(a)(6), 3-417(a)(4), 4-207(a)(6), and 4-208(a)(4).

The new warranty provisions enable banks to pass the loss caused by payment of an unauthorized telecheck back to the person who printed the item. For example, suppose a consumer orders a cassette tape of some fading pop star’s greatest hits from a telemarketing firm. She gives the firm all the information from the MICR line of one her checks. The firm prints a telecheck in the amount of the sales price for the cassette tape that is collected and paid without incident. Several
weeks later, however, the consumer discovers several more telechecks have been paid from her account. These additional drafts are unauthorized and hence are not properly payable. § 4-401. For that reason, our consumer is entitled to have her bank recredit her account for the amount of these items. Before the amendments made in 2002, the payor bank had no warranty claim to pass the loss back to the presenting bank and any previous transferors. See, *Interbank of New York v. Fleet Bank*, 730 N.Y.S.2d 208 (N.Y. City Civ. Ct. 2001). With the 2002 presentment warranty for remotely created consumer items, however, the payor bank now has a claim against the presenting bank and any previous transferor of the telecheck. If the payor bank pursues this claim against the presenting bank, that bank in turn would have the benefit of the identical transfer warranty for remotely created consumer items. By utilizing these provisions, the banks can eventually collect the amount of these unauthorized telechecks from the unscrupulous telemarketer who prepared them. The new warranty provisions compliment the FTC's Telemarketing Sales Rule that requires telemarketers to verify for a bank upon request that a consumer has indeed authorized any remotely created item drawn on the consumer's account. The FTC Rule requires the telemarketer to maintain a record of the consumer's authorization to draw the drafts either in writing, or more typically, by an audio recording of permission given over the telephone. 16 C.F.R. § 310.3(a)(3). The new warranty provisions should induce depository banks to exercise some care if they process telechecks for collection on behalf of their customers. If a customer deposits an unauthorized telecheck, withdraws the credit given for the item and skips town, the depositary bank will be left holding the loss.

**C. Alterations**

Another fraud associated with checks involves the alteration of a check that bears an entirely legitimate signature. The presentment warranties include a warranty against alterations. § 4-208(a)(2). As a result, the consequences of a fraudulent alteration under the basic loss allocation rules are similar to those resulting from a fraudulent indorsement or unauthorized telecheck. Generally, the loss will be passed back to the wrongdoer or, if he or she cannot be found, to the person who dealt with the wrongdoer.
For example, assume the drawer writes a check for $10 made payable to a dishonest payee. The payee raises the amount of the check to $100 and deposits it in his own bank. That bank presents the check and is paid $100. The check is not “properly payable” in the raised amount. The owner of the account on which this item is drawn authorized the payor bank to pay $10, not $100. The Code, therefore, permits the payor bank to hold the drawer accountable for $10, the amount of the item as originally drawn. (Presumably, the drawer received $10 in value for the check.) The bank must recredit the drawer’s account, however, for the remaining $90. § 3-407(c). As was the case with a fraudulent indorsement, the bank can pass the loss back to the presenting bank. The presenting bank breached the warranty against alterations and will lose the $90 unless it can recover from the thief. § 4-208(a)(2).

To summarize the basic rules for allocation of risks associated with forgeries, unauthorized telechecks and alterations, the Code generally fixes the loss on the person who dealt with the wrongdoer if the malefactor is not amendable to suit. In most instances, the person who dealt with the wrongdoer was in the best position to avert the loss. The one exception to this pattern involves a draft with a forgery of the drawer's signature. In such a case, the Code continues the rule of Price v. Neal and holds the drawee accountable for the loss if the wrongdoer cannot be found.

The Code’s loss allocation scheme does not end with these simple rules. The Code further refines the loss allocation rules with provisions designed to assure a party who bears some responsibility for a forgery or alteration at least shares in the loss.

D. Exceptions to the Basic Rules for Allocation of Losses

1. An Authorized Signature

In order for a signature to be considered a forgery, the drawer cannot have authorized it in any way. The Code recognizes, however, that a person may have real or apparent authority to sign another's name. Authority can rest on any doctrine recognized by the law of agency. § 3-402. The rules for shifting losses due to forgeries obviously will not apply if a signature is authorized. For example, in *Senate Motors, Inc. v. Industrial Bank*, 9 U.C.C. Rep. Serv. (Callaghan) 387 (D.C. Super. Ct. 1971) the
court did not treat a salesman’s indorsement of a check made payable to his employer as a forgery. The employer on many earlier occasions had permitted the salesmen to indorse checks and had therefore cloaked the salesman with apparent authority. Checks indorsed by the salesman would be “properly payable.” In Kaskel v. Northern Trust Company, 328 F.3d 358, 50 U.C.C. Rep.Serv.2d (West) 559 (7th Cir. 2003), a woman made a check payable to her investment advisor. The check was to fund a loan to a borrower whose repayment of the debt would provide a steady income to the woman. The advisor failed to indorse the woman’s check when it delivered the instrument to the borrower who promptly collected the check. The instrument was not “properly payable” under the Code’s standard rules. It was missing the advisor’s necessary indorsement. Nevertheless, Judge Posner refused to permit the drawer to contest her bank’s payment of the check. The drawer had collected several loan installments from the borrower and only complained about the wrongful payment of her check after the loan went into default. In effect, the drawer ratified what would otherwise have been an improper payment of her check. The Code has a number of other rules that work to validate missing, forged and flawed signatures.

2. IMPOSTORS

The imposter rule, for example, covers situations where the drawer of a check is induced to issue an instrument by someone impersonating another. For example, suppose a generous person is induced to write a check to Albert Schweitzer by someone impersonating the noted missionary. The drawer makes the check payable to “Albert Schweitzer.” The imposter indorses the instrument in Schweitzer’s name. Under the normal rules for allocation of loss the imposter’s signature would be ineffective to pass title to the instrument. The signature after all was not Albert Schweitzer’s. The instrument therefore would not be properly payable and the drawer would be entitled to have his or her account recrated with the amount of the item. Under the Code’s imposter rule, however, the imposter’s signature is made effective to pass title to one who pays the instrument in good faith. § 3-404(a). The bank may maintain the debit in the drawer’s account. The drawer, the person who was duped, bears the loss. The drawer in a situation like our example was in a better position to avoid the
loss than the payor bank. People should know with whom they’re dealing. The Code fixes the risk of
loss on the drawer who fails to make certain. Under the Code, it does not matter, as some courts had
ruled at common law, whether the impersonation occurs face to face or through the mails. The 1990
revisions to the Code also extended the imposter rule to situations where someone impersonates
another’s agent. For example, suppose in our example, the person impersonating Albert Schweitzer
persuaded the drawer to write a check made payable to “The Albert Schweitzer Hospital.” Under the
1990 revision, an indorsement by the imposter in the Hospital’s name would be effective. The
rationale is the same. The drawer is in a better position than the banks involved in determining
whether or not the person taking the instrument is indeed Albert Schweitzer.

In general, the courts have confined the 1990 extension of the imposter rule to the narrow
range of cases the drafters intended. The rule requires an imposter. It does not apply when a
wrongdoer simply claims to be another’s agent without impersonating anyone. See, *Title Insurance
the wrongdoer in our example had simply claimed to represent The Albert Schweitzer Hospital,
without impersonating Albert Schweitzer, a check made payable to the Hospital and indorsed by the
wrongdoer would not be properly payable. Without any impersonation of someone entitled to act for
the Hospital, the imposter rule does not apply to validate the unauthorized indorsement of the
wrongdoer. The standard rules for allocation of loss due to forgery would therefore apply. The
drawer is entitled to have the Hospital indorse the check. The instrument is converted if it is paid
against the wrongdoer’s forgery of the Hospital’s indorsement.

The Code’s imposter rule does make allowance for situations when someone else is careless
along with the drawer. For example, suppose a person obtains dozens of checks from several
different victims by impersonating Albert Schweitzer. The checks are made payable to the Hospital.
The wrongdoer indorses the instruments in blank in the Hospital’s name and deposits them in his
own account. The imposter rule clearly applies. The drawers who were fooled by the imposter would
normally bear the entire resulting loss. However, a trier of fact could determine the depositary bank
was also negligent. It would be highly unusual for a well-known charity like the Albert Schweitzer Hospital to indorse over so many of its checks to someone with whom it had no apparent relationship. In circumstances like these, the Code does permit a trier of fact to apportion the loss between the drawer and another party, here the depositary bank, according to their degree of fault. In other words, the 1990 revision to the Code adopts a comparative negligence regime to allocate a loss arising when more than one party is careless. § 3-404(d). The comparative negligence standard appears in all the rules we will cover in this section. Generally, each of these rules works to shift a loss to the drawer. They each, however, allow the drawer to apportion the loss among other negligent parties.

3. **Fictitious Payees**

The Code’s “fictitious payee” rule also makes indorsements effective which would otherwise be unauthorized signatures. The fictitious payee rule fixes losses occasioned by padded payrolls and similar scams. For example, suppose a corporation’s accounts payable clerk cuts a check to a non-existent supplier. The clerk, meanwhile, has set up an account in this fictitious supplier’s name. The clerk deposits the check in this account. The item is forwarded for collection and paid. The clerk then withdraws the funds.

Under § 3-404(b), if the person identified as payee in an instrument is a fictitious person, any person in possession of the instrument is its holder and any indorsement in the name of the payee is effective. The rule shields collecting and payor banks acting in good faith from liability. The drawer will bear the loss. The fictitious payee rule favors the financial intermediaries over the drawer. It’s easier for the drawer to detect these schemes than the banks.

Section 3-404(b) also applies in situations where “a person whose intent determines to whom an instrument is payable . . . does not intend the person identified as payee to have any interest in the instrument.” In other words, the drawer will be liable even if the payee is a real person, if the person signing on behalf of the drawer or using the drawer’s check writing machine, does not intend the payee to have the proceeds of the check. For example, a company pays independent contractors.
on the basis of time sheets they submit. The treasurer of the company makes up several phony time sheets in the name of a contractor who does do work for the company from time to time. Using the false time sheets as support, the treasurer issues a check in the contractor's name and deposits the check in an account the treasurer had set up. Because the treasurer never intended the contractor to have any interest in the check, the forged indorsement in the contractor's name will be effective under § 3-404 and the company must pay it. Section 3-404 is thus broader than its caption. It applies to nominal as well as fictitious payees. As was the case with the imposter rule, the drawer can shift a portion of a loss on a comparative negligence basis if the payor bank or any other person handling the check was also careless.

Note that the fictitious payee rule considers the intent of the person signing on behalf of the drawer at the time the check is issued. If, in our example, the treasurer had issued the check to the contractor for work the contractor had done, and only later decided to steal it, § 3-404(b) would not apply. Section 3-405 would, however. This section, added in the 1990 revision, makes employers generally responsible for fraudulent indorsements by their employees.

4. **EMPLOYER’S RESPONSIBILITY FOR AN EMPLOYEE’S FRAUDULENT INDORSEMENT**

Section 3-405 represents an extension of the policy that underlies the fictitious payee rule. An employer is in a better position to control check frauds perpetrated by the employer's agents than the banks that act as financial intermediaries in the payment system. The employer, after all, hires and supervises the employees. The employer can implement procedures to deter and detect fraud. Section 3-405, therefore, makes fraudulent indorsements of either the company’s or a third-party’s name effective if they are made by an employee the employer has entrusted with “responsibility with respect to instruments.”

The Code broadly defines “responsibility.” The term includes any employee who makes deposits, prepares checks, supplies information in order to have a check cut, or processes checks received by the employer. The definition only expressly excludes individuals who simply have access
to blank checks or the mail. The rule makes indorsements made by these employees, or their
accomplices, effective. The rule fixes the loss caused by employee frauds on their employer in any
number of situations not covered by the fictitious payee or other exception to the basic loss
allocation rules.

For example, assume an accounts payable clerk requests his employer to issue a check to a
supplier that regularly does business with the employer. The clerk attaches a genuine invoice from the
supplier to the check request. The employer’s treasurer then issues the check. The clerk steals it,
forges the supplier’s indorsement and deposits it in an account the clerk has set up in a name similar
to the supplier. The fictitious payee rule does not cover this case because the clerk is not a person
whose intent determines to whom the instrument is payable; the treasurer intended the actual
supplier to receive the check. §§ 3-404(b)(i), 3-110(a). None of the other exceptions to the loss
allocation rules cover the case either as they now exist or as they were phrased before the 1990
revision. Thus, in Danje Fabrics Division v. Morgan Guaranty Trust Company, 409 N.Y.S.2d 565 (1978), the
depository bank ultimately bore the loss on largely these facts because it breached its warranty of
good title. A necessary indorsement, the supplier’s, was forged. Yet, the employer is in a better
position to avoid a loss like this than the depository bank and section 3-405 would now make the
employer liable. The clerk has “responsibility” within the meaning of the section and the clerk’s
indorsement is therefore effective. The indorsement passes title. The depositary bank breaches no
warranty to the payor bank and the item is properly payable. The payor bank can maintain its debit
for the item in the employer’s account. The employer must pursue any claim for loss against its own
defalcating employee. Of course, if the depositary bank was also careless, say for example, in setting
up an account for the clerk, the new rule will allow the employer to shift all or part of the loss to the
bank under a comparative negligence analysis. Barring such a showing, however, the employer will be
liable for the frauds practiced by the employer’s agents without a need for showing the employer was
negligent in supervising the employee.

5. **Negligence Substantially Contributing to a Loss**
Negligence, which substantially contributes to the making of a forged signature or alteration, will preclude the negligent party from asserting the forgery or alteration as a defense against a party who pays or gives value for an instrument in good faith. § 3-406(a). This principle dates back at least until the early nineteenth century. In Young v. Grote, 4 Bing. 253 (1827), the drawer wrote a check so carelessly that it was easily altered. She wrote the word “fifty” in the middle of the line provided for the amount of the draft. She also left space between the “£” sign and the number “50.” The thief wrote the words “Three hundred” and the number “3” in the spaces the drawer had left open. The drawee paid the draft in the raised amount, £350.

Normally, when the amount of an item is altered, the drawee can only charge the drawer for the amount as originally drawn. § 3-407. The court in Young, however, held the drawer liable for the raised amount because her negligence facilitated the fraud. Section 3-406 would reach the same result. The drawer is in a better position to avoid a loss like this than the collecting or payor banks.

Section 3-406 states that a person’s negligence must “substantially contribute” to the forgery or alteration before that person will be precluded from raising the forgery or alteration as a defense. The official comment notes the phrase imposes a less stringent test than “direct and proximate cause” of prior law. See, Thompson Maple Products, Inc. v. Citizen’s National Bank, 234 A.2d 32 (Pa. Super. Ct. 1967). The section applies if negligence was a substantial factor and contributing cause of the fraud. § 3-405, Official Comment 2.

The question is quintessentially one of fact. As with the other exceptions to the standard loss allocation rules, a person found negligent under § 3-405 can shift a portion of the loss to other negligent parties on a comparative negligence basis. In all instances, the burden of proving another’s negligence lies with the party asserting it. § 3-405(c).

6. THE DUTY TO EXAMINE ONE’S BANK STATEMENT

Section 4-406 provides another important exception to the standard rules for allocating losses due to forgeries and alterations. Most banks send or make available to their customers a monthly statement of activity in their checking account. At one time, banks returned the checks that they had paid
during the prior month. Today, banks increasingly send only statements of account to their customers. In either case, a customer receiving the items or statement must examine them reasonably promptly for any forgery or unauthorized use of the customer's signature and for any alteration of a check the customer had written. If the customer spots a problem, the customer must notify the bank promptly. § 4-406(c).

The duty to report unauthorized signatures and alterations is triggered by a bank statement that gives the customer sufficient information to reasonably identify the checks paid from the account. § 4-406(a). The canceled checks or images of them will suffice. So will a statement that identifies each item by check number, amount and date of payment. § 4-406(a).

If a bank proves its customer breached its duty to examine the statement or items returned, the customer will be liable for any loss the bank proves it suffered as a result of an alteration or unauthorized signature of the customer. § 4-406(d)(1). More importantly, if the same person alters additional checks or forges the customer's name on future items the bank can hold the customer liable for any additional alterations and forgeries by the wrongdoer. § 4-406(d)(2). This “same-wrongdoer” rule is triggered if the customer has had a cancelled check or statement revealing an alteration or forgery for thirty days or, indeed, an even shorter period of time if a trier of fact deems it reasonably sufficient to have detected the problem. The rule’s clear line at thirty days makes it a very useful device for a bank seeking to avoid a loss the bank would otherwise be required to bear under the normal rules for allocation of loss. Common check frauds are nearly always repeated. In this respect, they are much like peanuts and potato chips. People who succumb to temptation can rarely stop at one.

To illustrate the usefulness of the rule, suppose a corporation has a janitor who pilfers some blank checks. The janitor forges the corporate treasurer’s name on one of the checks and makes it payable to himself. He deposits the check in his account. The check is forwarded for collection and paid. The payor bank sends the corporation an account statement that lists the forged check, identifying it by number, amount and date of payment. The corporation, however, does not detect
the forgery. The next month, the janitor forges two more items. Under § 4-406, the bank may be required to bear the loss on the first check. It was not properly payable. The section will permit the bank, however, to hold the corporation accountable for the latter two items. The same wrongdoer forged these items thirty days after the bank had made a sufficient statement of account available to the corporation. Had the corporation notified the bank of the first forgery, the bank could have taken measures to prevent payment on the later two forged checks.

A customer who would bear a loss under § 4-406 for a forged or altered check may show the paying bank was also negligent in paying the item. In such a case, the loss will be apportioned between the customer and the bank according to their relative degree of fault. § 4-406(c). Note that a bank is not negligent merely because it fails to examine its customer's signature. If a bank's automated check processing procedures do not vary unreasonably from general banking usage, its failure to examine signatures will not be deemed a lack of ordinary care. § 3-103(a)(7).

Section 4-406 sets some absolute time limits on a customer's duty to notify a bank of any alteration or unauthorized signature of the customer. A customer must report any such alteration or unauthorized signature within one year after the bank has made a statement of account or cancelled check available. A customer who fails to do so cannot raise the alteration or unauthorized signature against the bank. § 4-406(f). The uniform version of section 4-406 does not impose any duty on a customer with respect to forged indorsements. After all, a customer who examines a cancelled check is unlikely to know whether or not an indorsement is forged. Nevertheless, some states have adopted non-uniform versions of section 4-406 (f) that extend the one-year notice of claim requirement to forged indorsements.

Many state legislatures have tinkered with the uniform text of section 4-406. The section has proven to be one of the most controversial provisions of the Code. When the state legislatures took up the 1990 amendments to section 4-406, consumer groups complained about the change that allows a bank to send a statement of account to its customers rather than each month's cancelled checks. While the uniform text mandates that banks must make the cancelled checks or copies
available to consumers, it says nothing about the fees banks may charge for this service. Consequently, California and other states adopted non-uniform provisions that require banks to make two cancelled checks or copies thereof available to their customers free of charge. A few states have shortened the 30-day time period in the same wrongdoer rule, section 4-406(d)(2) of the uniform texts. Some states have also shortened the one-year notice of claim provision set forth in subsection (f) of the uniform text. Moreover, it has become commonplace for banks to shorten those time frames in their standard form deposit agreements. Consumer groups have contended that the uniform text of article 4 should curtail this practice. As we will see in the next chapter, the courts have generally enforced deposit agreements that shorten the notice of claim provisions in § 4-406.

7. Statutes of Limitation

Subsection 4-406 (f) is a notice of claim provision. It is not a statute of limitations. It requires a customer to notify a bank of a forgery or alteration within a year of receiving a bank statement. The subsection does not require the customer to bring suit within that time. However, section 4-111 does establish a three-year statute of limitations on any action to enforce a right under Article 4. This would include any claim that an item was not properly payable due to a forged indorsement or alteration. It also comports with the three-year statute of limitations under Article 3, including actions for breach of warranty. § 3-118(g). Although the Code sets forth limitations periods, it does attempt to define the circumstances which would justify tolling its statutes of limitation. On this point, like many others, the Code defers to general principles of law and equity. § 3-118, official cmt. 1. Most courts have not applied doctrines from the law of torts like the discovery rule that tolls a statute of limitation until the plaintiff should reasonably have discovered his or her injury. E.g., Yarbro, Ltd. V. Missoula Federal Credit Union, 50 P.3d 158 (Mont. 2002); Menichini v. Grant, 995 F.2d 1224 (3d. Cir. 1993); Kuwait Airways Corporation v. American Security Bank, 890 F.2d 456 (D.C.Cir. 1989). Generally, these decisions involve business entities who should monitor their accounts and have safeguards in place to control employee thefts. On occasion, however, a court will toll a limitations period established by the Code for a non-business entity less well equipped to detect and prevent

8. **The Bank’s Duty of Good Faith**

A bank must pay or otherwise handle a check in good faith before it can avail itself of any of the loss shifting rules. *See §§ 4-406(e), 3-404(a), 3-404(b)(2), 3-405(b), 3-406(a).* Bad faith is more than a lack of due care. It connotes dishonesty or a failure to conform with prevailing standards of fair dealing. § 3-103(a)(4). Suppose, for example, that a bank employee aids and abets a check fraud. The bank employing the malefactor will not be permitted to shift any portion of the resulting loss to someone else even if the Code would otherwise permit it to do so under one of the loss allocation rules. *McAdam v. Dean Witter Reynolds, Inc.*, 896 F.2d 750, 10 U.C.C. Rep. Serv. 2d (Callaghan) 1085 (3d Cir. 1989). As we have seen, all the loss-shifting rules permit a party liable for a loss to apportion that loss among other negligent parties on a comparative negligence basis. *See §§ 4-406(e), 3-404(d), 3-405(b), 3-406(b).* A person whose bad faith contributes to a loss should not be able to apportion the resulting damages. A bank that pays a check in bad faith, for example, cannot shift any portion of the loss to its customer even if the customer failed to examine a bank statement. Section 4-406(e) expressly states this limitation on the availability of the comparative negligence defense. The principle is implied in the other loss shifting rules. The Code recognizes that every party to a commercial transaction must deal with others in good faith, banks not excepted. § 1-203. Beyond this, however, banks owe their customers unique obligations arising from their relationship.