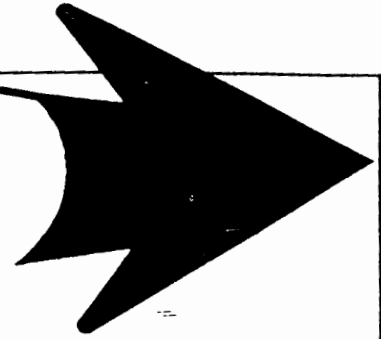


THE ARROW

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THE IMPOSTOR, YOUR NEPHEW, AND ELVIS



Sometimes a very technical legal issue is more easily understood by an example close to home. Imagine if you will that your morning's mail brings a letter from your favorite nephew, Jack Armstrong, an all American boy. Jack has written you from Fort Lauderdale, Florida, and explains that he had been celebrating spring break with his college chums but has just lost the balance of his vacation funds in an all night poker game and does not even have the price of his return fare. Since he is too embarrassed to ask his parents for the money, he requests a loan from you in the amount of \$500.00 so that he can resume his studies at the local university.

Since Jack really is your favorite nephew, you are deeply touched and immediately write a check to him and

express mail it to the motel address he has given you. Of course, you also enclose an affectionate note about the folly of attempting to fill an inside straight. After all, wouldn't any doting aunt or uncle do the same?

A week later, much to your surprise, you run into Jack on the street. When you question him about his spring break, however, Jack informs you that he has never been to the state of Florida, and that he spent spring break working on a term paper for his English professor. Since you know Jack to be an honest fellow, you immediately head for your local bank to stop payment on the check you had drawn to the order of "Jack Armstrong."

Unfortunately, your friendly banker there informs you that your check has already cleared the bank and produces the actual instrument with the endorsement of "Jack Armstrong" on the back of the check where it should be. Jack has kindly accompanied you to the bank and explains to your banker that the endorsement on the check, although it bears

some resemblance to his signature, is a forgery. You therefore request that your banker recredit your account with the \$500.00.

Much to your surprise, your banker does not wish to do so.

Query: Under the law, who, other than the impostor pretending to be your nephew, is responsible for the \$500.00 and must bear the loss? Clearly, your nephew is not at fault since he was hard at work during the time in question typing footnotes for his term paper. As between the other two innocent parties, you or your bank, who must bear the loss?

The answer can be found in the Uniform Commercial Code, Article 3, Section 405, known as the so called "Impostor Rule." It reads in relevant part as follows:

"(1) An endorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee . . ."

Thus, although your check names your nephew as payee, and the endorsement was forged by an impostor, the endorsement is effective and can be honored by your bank to your loss. As between the two innocent parties, the law evidently presumes that you, as the one who dealt directly with the impostor—albeit through the mail—was the party best able to avoid the loss.

Some even more interesting case law indicates that the impostor does not even have to impersonate a real person in order for the rule to come into effect. That is, the named payee can be a fictitious person and the forged endorsement of the fictitious payee (if indeed, a fictitious person's endorsement can be "forged") is nonetheless effective. This means that even had you received a letter from Elvis Presley requesting donations to fund a comeback tour, and you were foolish enough to mail Elvis a check, your banker could safely honor your check with Elvis's endorsement. Of course, this example presumes that the rumors of Elvis's death have not been exaggerated. □

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