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Crossed Checks, Account Payee, And Non-Negotiable Checks: Some Suggestions From Foreign Law

By Daniel E. Murray*

Introduction

A Merican codifications have, in general, treated the law governing checks as a mere subdivision of the law governing drafts or bills of exchange without perceiving that these instruments, although related, actually perform different functions. The draft or bill of exchange is a credit instrument payable at sight, or more commonly, after a certain specified period. A check, on the other hand, is used normally to pay for goods and services and is designed basically for payment and not credit. The drawer and drawee of a draft (bill of exchange) normally anticipate that this instrument will be negotiated to a bank which is financing the sale of goods in domestic or international commerce, and that this bank will indorse it to other banks or financing agencies for collection. In this situation, the various banks or financial institutions should be protected from most defenses which may arise between the vendor and vendee by means of the negotiability concept. The vendor-drawer and the vendee-drawee use the draft with full cognizance of the risks involved because it is the only practical way of handling the credit sale and purchase of goods.

The drawer of a check, on the other hand, is not entering into a credit transaction for his own benefit, but rather is concerned about paying a current bill, whether for goods or services. If a drawer-debtor desired a credit arrangement, he would give the credi-

* Professor of Law, University of Miami.

1 Uniform Commercial Code § 3-104 [hereinafter cited as U.C.C.]; Uniform Negotiable Instruments Act § 185 [hereinafter cited as N.I.L.]. The English Bills of Exchange Act of 1882, 45 & 46 Vict., c. 61, § 73 [hereinafter cited as B.E.A.], was the model for N.I.L. § 185. The effect of section 73 of the English Act has been limited by the special rules for checks of section 60 of the same Act and also by the crossed check legislation discussed in text accompanying notes 12–27 infra.

tor a promissory note or some other credit instrument. The drawer of a check normally does not anticipate that his payee will indorse the check to a holder, who may in turn indorse it to another holder, thereby placing the instrument in the flow of commerce. Most checks, with the possible exception of payroll checks, will be deposited for collection by the payee in his own bank, which will directly or indirectly make collection from the drawee bank. The payee may, of course, abbreviate this collection process by presenting the check directly to the drawee bank and securing payment. The payee also may indorse it to a merchant or proprietor and receive full payment.

It would seem that many persons would cash their payroll checks with local retail concerns. In such cases the merchant would be protected against many of the defenses to payment of the instrument that exist between the immediate parties to the transaction because of negotiability principles. The increasing use of checking accounts by white and blue-collar workers, however, should diminish this use of the negotiability concept with respect to checks.

Problems Caused by Application of Negotiability Principles to Checks

The negotiability concept originated with the law merchant as a means of making the bill and the note efficient commercial substitutes for money. Under this concept, the bill or the note is unfettered by contractual defenses existing between the immediate parties to the instrument once it reaches the hands of a holder in due course. Negotiability facilitates the transfer of such instruments, which are issued primarily for credit.

The check, however, as noted above, is basically a payment and not a credit instrument. The present application of negotiability principles to checks permits, if not encourages, the following misuses of the check:

1. A fraudulent vendor sells goods to a defrauded vendee. The vendee gives a check to the vendor, who indorses to a holder in due course, and the latter recovers from the drawer-vendee. The vendor is insolvent or has vanished, and all loss falls on the vendee.

2. A dishonest employee supplies his employer with the names of real or fictitious creditors. The employer signs checks payable to these “creditors,” and the employee then indorses

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4 As to the present applicability of negotiability principles, see generally J.B. Smith, 2 California Commercial Law § 1.1 (Cal. Cont. Educ. Bar. 1964).

5 U.C.C. §§ 3-302 to -305.
these checks to a confederate, who indorses them to a holder in due course or makes collection directly at the drawee bank. All loss falls on the employer.\textsuperscript{6}

(3) An imposter induces the drawer to issue a check to him in the name of the person impersonated. The imposter then indorses the check to a confederate, who indorses to a holder or makes direct presentation to the drawee. Again, all loss falls on the drawer.\textsuperscript{7}

(4) The drawer gives a check to a payee-creditor. The payee indorses to a holder who alters the check by increasing the amount and then indorses to a holder in due course. The holder in due course may recover the original amount of the check, and he will suffer a loss, which is computed to be the difference between the original amount of the check and the amount he paid for it. If the negligence of the drawer substantially contributed to the alteration, the drawer will be precluded from asserting the alteration against the holder in due course or against his own drawee bank which paid the check in accordance with reasonable commercial standards. From the perspective of either the drawer or the holder in due course, these are not happy alternatives.\textsuperscript{8}

(5) A drawer-debtor mails a check to the payee. The check is stolen from the mails, or from the payee after it is received. The thief forges the name of the payee and indorses it to a good faith holder. The good faith holder indorses for collection to his bank which collects from the drawee. This "simple" transaction results in the drawee having a cause of action against the collecting bank. In addition, of course, the collecting bank can recover from the good faith holder. The true payee also may sue the collecting bank, or he may sue the drawee bank. The payee also may sue the drawer on the unpaid underlying obligation for which the check was issued. The drawer, finally, may need to sue the drawee bank to force it to recredit his account. This "simple" transaction may result in six possible lawsuits, none of which would have been necessary had the drawer paid his debt in cash.\textsuperscript{9}

It is evident that if the drawer in examples (2), (4) and (5) had \textit{delivered} cash to his creditor, he would not have suffered any loss. In these situations, the check is inferior to cash. Of course, the

\textsuperscript{6} U.C.C. §§ 3-405(1) (b) to -405(1) (c).
\textsuperscript{7} U.C.C. § 3-405 (1) (a).
\textsuperscript{8} U.C.C. §§ 3-407, -406, 4-401.
\textsuperscript{9} U.C.C. §§ 3-304, -414, -419, 4-207, -401, -407.
possession of cash would entail the risk of possible theft or robbery from the drawer, and the use of checks eliminates this risk as well as the risk of loss. Insofar as examples (1) and (3) are concerned, if there were some way to prevent the “easy” negotiation of the checks by the payees, many embezzlements and frauds would be prevented. The prevention of easy negotiation also would be of immense help in obviating the situations explained in examples (2), (4) and (5).

It may be thought that section 3-805 of the U.C.C., which states that Article 3 “applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument,” is sufficiently broad to cover the fact situations delineated by the author. But this is not necessarily true. If the drawer in all the above examples should strike the words of negotiability from the instrument, there could be no holder in due course, but all the other provisions of Article 3 would apply. As a result, the dishonest possessor of the “3-805 non-negotiable check” merely would eliminate the indorsement step without any concomitant reduction in loss to the drawer, drawee and collecting banks in the respective problems. The dishonest person does not need the insulation of a holder in due course if he personally can present the check to the drawee-payor bank and receive payment.10

Suggested Check Form

In short, what is needed is an instrument which calls upon a bank to pay the payee, but which can be neither negotiated to a holder in due course nor assigned to anyone for the purpose of collection except a bank in which the payee has an existing account. Such an instrument would work in the following way if we take example (2) above as an illustration. The dishonest employee supplies his employer with the name of a supplier—The Acme Company—as a creditor. In fact, Acme has not invoiced the employer for a present obligation but has sold goods in the past to the employer. The employer’s treasurer signs an instrument made payable to The Acme Company which calls upon the drawee to pay The Acme Company when the check is presented by a collecting bank in which Acme has an account. Now, if the employee desires to effectuate his fraud, he must previ-


The use of restrictive indorsements would seem also to be of limited utility under the U.C.C. in preventing the losses illustrated in the above examples. See U.C.C. § 3-206 & Official Comment.
ously have opened an account in a bank in the name of The Acme Company before this "instrument" is deposited for collection. The depository-collecting bank will have required presentation of certain papers for the establishment of this account, and its fraudulent purpose may come to light during this process. In addition, the dishonest employee must open similar accounts for other fraudulent payees in order to carry out his scheme, and it is likely that he will run out of banks before he is able to develop his scheme to the fullest extent. If he chooses the names of real companies or real individual payees (and he must do so in most cases in order to fool his employer), the possibility of detection will be increased by the necessity of opening these accounts.

The use of this instrument in example (1) would give the defrauded vendee an opportunity to stop payment on his check since the payee could not indorse to a holder in due course but would be compelled to deposit the instrument in his bank for collection. Similarly, the imposter in example (3) would be required to open an account, which takes some time to process, and since speed and simplicity are essential to the successful effectuation of the imposter or assumed name type of fraud, the difficulty of the task would be greatly increased. Likewise, the restriction on negotiation inherent in this instrument would reduce the likelihood of the alterations and forgeries outlined in examples (4) and (5).

Clearly, the restricted check form suggested here would intensify the difficulties of attempted wrongdoing in such cases, and would increase the chances of detection of any scheme of this type. It is not contended that such an instrument would be a panacea. However, it should help to reduce the volume of this type of fraudulent conduct.

Because of the limited protection afforded by section 3-805 of the U.C.C., it would appear that the successful introduction of this proposed instrument would require legislation. It is hoped that the following discussion dealing with "crossed" checks, "account payee" checks and non-negotiable checks under the law of England, the Geneva Check Convention,11 Continental Europe and Latin America may offer some suggestions.

I. English Practice

A. Crossed Check Principles

At the outset, it should be noted that the provisions of the English Bills of Exchange Act of 1882 and the Cheques Act of 1957 dis-

cussed in this section of the article are still the applicable law in England. The English Bills of Exchange Act of 1882, borrowing heavily from the drafts on Bankers Act of 1856, the drafts on Bankers Act of 1858 and the Crossed Cheques Act of 1876 provides that any drawer or holder of a check may draw "two parallel transverse lines" across the face of the check. This "crossing" means that the check has been crossed generally. Either the drawer or the holder may insert the words "and company" and additionally or alternatively the words "not negotiable" inside these two lines and this also will constitute a "general crossing."

Further, the drawer or holder may add the name of a specific bank across the face of the check. This addition will constitute a special crossing. The bank's name may be added either with or without the words "not negotiable," and the Act does not require that the bank's name be inserted between two transverse lines, although it is customarily done this way.

Pursuant to section 79 of the English Bills of Exchange Act, the drawee-payor-bank on whom a crossed check is drawn must, if the check is crossed generally, pay it to a bank or, if it is crossed specially, pay it to the designated bank or the designated bank's collection agent if the agent is also a bank. If the drawee fails so to pay the instrument, he is liable by the terms of the Act to the "true owner" of the check for any loss which may be incurred as a result of the improper payment.

Although it is not entirely free from doubt, it appears that the words "true owner" in this section of the Act refer to the drawer in situations where, for example, he has had the check stolen from him prior to its issuance to the payee. If these words refer to the

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12 45 & 46 Vict., c. 61.
13 19 & 20 Vict., c. 25.
14 21 & 22 Vict., c. 79.
16 B.E.A. §§ 76-77. See Appendix A for illustrations of generally crossed checks.
17 B.E.A. §§ 76-77.
18 Id. See Appendix B for illustrations of specially crossed checks, and also an example of a "Not Negotiable A/C Payee Only" check.
19 M. Megrah, Byles On Bills Of Exchange 254-56 (22nd ed. 1965) [hereinafter cited as Byles].
20 B.E.A. § 79.
21 Id.
payee, who has had the check stolen from him, rather than the drawer, they seem somewhat redundant in light of section 80 of the Act. Section 80 provides that when the drawee-payor pays a crossed check in good faith and without negligence to a bank, in the case of a general crossing, or to a specific bank, in the case of a special crossing, after "the check has come into the hands of the payee," both the drawee-payor and the drawer "shall respectively be entitled to the same rights and be placed in the same position as if payment of the check had been made to the true owner thereof." Under this latter section, a payee who has had the check stolen from him and then collected by a forger would have no recourse against the drawee-payor nor against the drawer. In effect, the law would consider that the check has been paid to the payee, and he would have no recourse against the drawer either on the check itself or on the underlying obligation for which it was issued.

A corollary to this protection afforded the drawer and drawee-payor-bank was articulated in former section 82 of the English Bills of Exchange Act. It was there provided that if a collecting bank in good faith and without negligence received payment of a crossed check for a customer who had either no title or a defective title thereto, the collecting bank would incur no liability to the true owner of the check for merely receiving such payment.

Section 82 was repealed by the Cheques Act of 1957, but its exculpatory provisions were reenacted and enlarged by the latter Act. Under section 4 of the Cheques Act of 1957, when a bank in good faith and without negligence receives payment of a check for a customer, or "having credited a customer's account with the amount of such an instrument, receives payment thereof for himself," and the customer has either no title or a defective title to the check, the bank incurs no liability to the true owner of the instrument for merely having received payment. It is to be noted that this same section provides that a bank is not to be considered negligent for merely failing to concern itself with the absence of or an irregularity in the indorsement of a check. It is also to be noted that section 4 protects the collecting bank on all checks—whether crossed or uncrossed.

23 B.E.A. § 80; Paget 278.
24 Paget 278.
25 Id.
26 B.E.A. § 82.
27 Cheques Act, 1957, 5 & 6 Eliz. 2, c. 36.
29 Id.
30 Id.
31 Byles 283.
Neither the Bills of Exchange Act of 1882 nor the Cheques Act of 1957 defines the word "customer," but it would seem that a customer must have an account with the bank in which the crossed check is deposited for collection. The presenter of a check for a cash payment who does not have an account in the bank would not be a customer within the meaning of the acts. Unfortunately, it appears that no fixed period of time is required in order for a depositor to become a customer; a depositor may open his account with the very check in question and the courts will treat him as a customer. It must be remembered, however, that the collecting bank must act "in good faith and without negligence" in receiving payment for the customer or in crediting his account in advance of collection. It may be considered evidence of negligence if the collecting bank fails to make adequate inquiry concerning the identity of the person opening the account. From the above discussion, it is apparent that the crossed check process is designed primarily to prevent the cash payment of items.

B. Contrast with Uniform Commercial Code

In order to place these crossed check rules in their proper perspective it is important to remember that other sections of the English Bills of Exchange Act of 1882 give protections to an English bank which are quite different from those afforded by the U.C.C. to its American counterpart. In England, when an ordinary check is paid by the drawee-payor in good faith and in the ordinary course of business, he is deemed to have paid the check in due course even though the payee's indorsement is forged or is made without authority. Also, the collecting bank is not liable if it receives payment of such an instrument for a customer. Neither the American N.I.L. nor the U.C.C. affords similar protection to the drawee-payor.

The English practice differs, however, in the crossed check situation. In order to avoid possible liability for payment on a forged indorsement, the English drawee, when dealing with a crossed check, must see that the check is paid to a bank rather than to an individual presenter. In this sense the English crossed check rules are more burdensome for the drawee than the rules governing ordinary checks.

34 BYLES 288-91; PAGET 361-62.
35 B.E.A. § 80; see Murray, Forged Bills of Exchange and Checks: A Comparison of the Anglo-American, European and Latin American Law, 82 BARK. L.J. 565 (1965) [hereinafter cited as Murray].
36 Murray, supra note 35, at 565.
37 B.E.A. § 80.
It is evident that the crossed check rules exist in England upon a legal framework which is different, at least as regards liability for forged indorsements, from that prevailing in the United States. But if similar crossed check rules were adopted in the United States the added burden would not be great since the drawee is already responsible for forged indorsements.\footnote{U.C.C. § 3-419(1) (c).}

Somewhat surprisingly, a crossed check may be negotiated to a holder in due course unless the words “not negotiable” appear between the two transverse lines, and even if these words are added the check still may be transferred but the transferee cannot be a holder in due course.\footnote{PAGET 214–20.} Section 3-805 of the U.C.C. likewise permits the transfer but not the negotiation of a non-negotiable instrument, but the drawee is not required under the U.C.C. to make payment to a collecting bank rather than to a presenting individual holder of the check, as is required under English crossed check rules. As a practical matter, it would seem that if a check were crossed specially (with the name of the payee’s bank) and the words “not-negotiable” were added, most potential transferees would hesitate to purchase the check unless they had the same bank. It likewise would seem that most businessmen would be extremely reluctant to purchase any crossed check which had the words “not negotiable” written on its face unless they were certain of the reliability of the holder. Thus, the wording “not negotiable” would not prevent transfer, but it should reduce substantially the ease of transfer.\footnote{Id.}

C. Crossed Check with “Account Payee” Notation

The practice developed in England of adding the words “A/C payee” or “account payee” or similar words to the crossing of the check, even though the English Bills of Exchange Act of 1882 did not expressly countenance this procedure.\footnote{BYLES 296–97; PAGET 220–23; J. HOLDEN, THE HISTORY OF NEGOTIABLE INSTRUMENTS IN ENGLISH LAW 241 (1955); J. SMITH, A COMPREHENDIIUM OF MERCANTILE LAW 269–70 (13th ed. 1931). See Appendix C for illustrations of “account payee” checks.} The presence of these words imposes a duty of inquiry as to ownership on the collecting bank, and failure to discharge this duty may amount to negligence,\footnote{House Property Co. v. London County & Westminster Bank, [1915] 85 L.J.K.B. 1846; BYLES 296-97.} subjecting the collecting bank to liability to the payee. The negligence in this instance is allowing someone other than the true owner to obtain payment of the instrument. “[I]t eventually became established that to collect such a cheque for a person other than the payee without
making reasonable inquiries constitutes negligence.\textsuperscript{43} Thus, the words “account payee” do not render the check non-transferrable, but it is evident that the threat of liability will impede the ease of transfer.\textsuperscript{44}

The practice of adding the words “account payee” to the crossing bears great resemblance to the German provision which prevents the cash payment of checks exhibiting the words \textit{Nur zur Verrechnung} (only for set-off in account). The “account payee” check was in use in England sometime prior to 1852\textsuperscript{45} and it is somewhat difficult to say that the English practice came from German law, although it may have come from German banking practice. It would appear that the German legislation of 1908\textsuperscript{46} was the source of similar rules in the Geneva Check Convention, which will be discussed in the next section of this article.

\section*{II. Continental Europe}

In order to examine fruitfully the check law of Continental Europe, some differences from American law should be noted. A drawee in most Continental European countries is not liable to the drawer if it honors in good faith a check bearing the forged signature of the drawer. In addition, a bona fide holder may acquire good title to a non-crossed check which bears the forged indorsement of the payee, and a collecting bank will be protected if it collects a check for such a holder. The crossed check and account payee rules are an attempt to give some measure of protection to the drawer and the payee against forgery of their respective signatures.\textsuperscript{47}

\subsection*{A. Geneva Check Convention}

The Geneva Check Convention of 1931\textsuperscript{48} in Annex II, articles 37, 38 and 39, adopted crossed check and the account payee check principles. In these articles the Convention borrowed extensively from English and German law, but did not incorporate the comprehensiveness of either. The signatories to this Convention undertook, with

\begin{itemize}
  \item \textsuperscript{43} \textit{J. Holden, The History of Negotiable Instruments in English Law} 241 (1955).
  \item \textsuperscript{44} \textit{House Property Co. v. London County & Westminster Bank}, [1915] 85 L.J.K.B. 1846; \textit{Byles} 296-97.
  \item \textsuperscript{45} \textit{Bellamy v. Majoribanks}, 155 Eng. Rep. 999 (Ex. 1852).
  \item \textsuperscript{46} \textit{German Law of March 11, 1908}, [1908] Reichsgesetzblatt (RGBI) 71.
  \item \textsuperscript{47} \textit{Murray, supra} note 35, at 565.
\end{itemize}
certain expressed reservations, to introduce in their respective countries the substance of the principles adopted at the Convention.\textsuperscript{49}

Article 37 provides, similarly to the English rule, that a crossing may be general or special. The general crossing may consist simply of two parallel lines on the face of the check, or of such lines with the addition of the name of the bank or some equivalent. The special crossing requires the name of the bank to be written between the lines, and while a general crossing may be converted into a special crossing, a special crossing may not be converted into a general crossing.\textsuperscript{50}

Article 38 provides that a check which is crossed generally can be paid by the drawee only to a bank "or to a customer of the drawee."\textsuperscript{51} The specially crossed check can be paid by the drawee only to a specified bank, "or if the latter is the drawee, to his customer."\textsuperscript{52} The named bank of the specially crossed check may allow the check to be collected by another bank, however. A collecting bank may take a crossed check only from one of its customers or from another bank, but it may not collect such a check for any other person. If the drawee or a bank fails to observe these rules, it is liable for the resulting damage up to the amount of the check.\textsuperscript{53}

It is to be noted that the Geneva Check Convention does not follow the English rule that the words "not negotiable" may be added between the two parallel lines, thereby making the check non-negotiable. However, article 14 provides that when an ordinary check is made payable to a specified person and the words "not to order" or any equivalent expression have been inserted, it can be transferred only "according to the form and with the effects of an ordinary assignment." Under the Convention, the drawer may, therefore, draw a check payable to a specified person "not to order" and then cross it specially. By this process, he may escape the onerous provisions of the Convention, which state that a holder who has acquired a check in good faith and without being chargeable with gross negligence is deemed the lawful holder of an indorseable check even though the payee's signature has been forged.\textsuperscript{54} This process has no counterpart in the United States.

The Convention codified the German "account payee" practice, and as codified it does not seem to be a part of the crossing process as it is in England. Article 39 provides that the drawer or the holder of

\textsuperscript{49} Geneva Check Convention, arts. 1-11, Annex II, arts. 1-31.
\textsuperscript{50} Geneva Check Convention, Annex I, art. 37.
\textsuperscript{51} Id., Annex I, art. 38.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id., Annex I, arts. 19, 35.
a check may forbid its payment in cash by writing transversely across the face of the check the words “payable in account” or a similar expression. The drawee then may pay the check only “by means of [a] book entry (credit in account, transfer from one account to another, set off or clearing house settlement),” and the drawee who fails to comply with these rules “is liable for [the] resulting damage up to the amount of the cheque.”

Although it is not expressly stated, it would appear that a check made “payable in account” would have the same effect as a crossed check since, if the drawee must pay the check by means of a bookkeeping entry rather than in cash, the holder of the check would be required to make presentation

55 Id., Annex I, art. 39. The Geneva Check Convention provisions regarding the crossed check and the account payee check may be traced to Resolutions 19 and 20 of the Hague Conference of 1911:

"Art. 19. The check crossed on its face (au recto de—literally on its first page) by two parallel lines may not be paid except to a banker.

"The crossing may be effectuated by the drawer or by a holder.

"The crossing may be general or special.

"The crossing is general if it does not bear between the two lines any designation or it mentions banker, an equivalent term or simply et cie; it is special if the name of a banker is written between the two lines.

"The general crossing may be transformed into a special crossing. But the special crossing may not be transformed into a general crossing.

"The check crossed specially may not be paid except to a designated banker. However, if the latter does not make the collection by himself, he may substitute another banker for himself.

"It is forbidden to erase the crossing as well as the name of the designated banker.

"The drawee who pays the crossed check to a person other than a banker, if the crossing is general, or to a person other than the designated banker, if the crossing is special, is responsible, as the case may be, for harm caused, without the damages-interest being to exceed the amount of the check.

"The power of excluding the system of crossed checks is reserved to the contracting States, for checks payable in their territories.

"Art. 20. The drawer as well as any holder of a check may prohibit that the check be paid in cash, by including on the face, the transferal statement to hold in account (d porter en compte) (Nur zur Verrechnung) or an equivalent expression. In this case, the check may only be liquidated by means of a settlement in writing (credit in account, transfer or compensation). The settlement in writing is equivalent to payment. The statement hold in account (d porter en compte) may not be revoked.

"The violation of said statement renders the drawee responsible for the harm caused, without the damages-interest being to exceed the amount of the check.

"It is reserved to the contracting States, with respect to the checks payable in their territories, the power of regulating the effects of said clause in the case of insolvency of the drawee, as well as of excluding the system of checks with the statement to hold in account (d porter en compte)."

Text of the Hague Rules were translated by the author from the French text printed in J. Bouteron, Le Cheque 318-19 (1924).
through a bank in which he had an account.

The signatories to this Convention reserved the right "to recognize in . . . [their] national law only crossed cheques or only cheques payable in account." The signatories also agreed that where one nation recognizes only crossed checks, a check issued in another nation and in the other form (check payable in account) would be treated as a crossed check, and vice versa. For example, a crossed check issued in France, which recognizes only crossed checks, and payable in Germany, which recognizes only checks payable in account, would be treated as if it were a check payable in account. Likewise, a payable in account check issued in Germany but payable in France would be treated as if it were a crossed check.

B. Acceptance of the Convention's Rules

The Geneva Convention was signed by England, France, Germany, Italy, Spain and numerous other countries, but the crossed check and payable in account concepts were not adopted uniformly by the signatories. In addition, the Geneva rules suffered some minor changes and condensations in the various translations. The Geneva crossed check rules had to compete with earlier versions in force in some European countries which obviously were borrowed from England. As previously indicated, the English crossed check rules are more extensive than the Geneva rules; also, England has not enacted the payable in account rules which the Convention propounds as a complement to the crossed check concept. As will be seen, the Convention's goal of providing a uniform law for checks has not been fully realized.

France adopted articles 37 and 38 of the Convention as its domestic law in 1935. Article 38 was modified slightly, but without any sig-

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56 Geneva Check Convention, Annex II, art. 18.
57 Id.
59 The original signatories are listed in 5 M. Hudson, INTERNATIONAL LEGISLATION 890-92 (1936).
60 For example, the Spanish Code of Commerce of 1886 provides: "The drawer or any legal holder of a mandate of payment [mandato de pago—a check under Article 534] has the right to indicate on it that it shall be paid to a banker or determinate Society, which shall be expressed by writing between crossed lines on its face the name of said banker or society or only the words 'and company.' "
61 See text accompanying note 32 supra.
significant change in the provision's effect. France did not adopt the payable in account check concept of article 39; however, and pursuant to the authority conferred by Annex II, article 18, of the Geneva Convention adopted legislation which provides that "checks payable in account issued to foreigners and payable in French territory shall be treated as crossed checks." 

In discussing the application and usefulness of the crossed check concept in France, Professor Ripert has observed:

The usefulness of this form of check is twofold: on the one hand, it avoids the risk of loss or theft, as the thief himself will not be able to present the check for collection and will find no bank willing to present it; that is why those checks are sent by ordinary mail without registering it; on the other hand, as the check must be remitted necessarily to a banker it will not be paid in money but will be credited to the account of the client . . . .

However, such security is less complete than it is thought. It is possible, in effect, to falsify the check by means of "cleaning" the crossed lines, and any banker that would pay the bearer, if it was not possible to suspect any falsification, will have paid correctly . . . . Besides, a crossed check may be indorsed, and if it has been indorsed by the thief in favor of a third party in good faith, this one will not hesitate in presenting it to his own banker in order to collect it. All in all, in spite of these dangers which are exceptional the security is still great . . . .

The crossed check can be endorsed . . . but a banker can acquire a crossed check only from a person authorized to present it. In order to collect it, he may ask another banker. The banker will be responsible up to the amount mentioned in the check, for any damage due to the lack of observance of these provisions. It is true, on the other hand, that these are very annoying for the persons who receive a crossed check and have no account in any bank.

Professor Ripert, in examining the check payable in account or clearing house settlement (chèque à porter en compte ou de compensation) has noted:

In some foreign countries there is a different kind of check which will never produce a payment in cash. The amount of the check has to be obligatorily payable in account and the check, therefore, cannot be used if not in view of a clearing house settlement. The Geneva Convention admitted this type of check as valid, but not so the French law. This one [the Geneva Convention] provides that any check of that nature, drawn in a foreign country, and to be paid in French territory, will be treated as if it were a crossed check . . . .

Italy in 1933 adopted articles 37, 38 and 39 of the Geneva Con-

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64 G. Ripert, Traité Élémentaire de Droit Commercial 753-54 (1951).
66 Id. For a superb description of French banking practice regarding crossed checks, see Farnsworth, The Check in France and the United States, 36 Tul. L. Rev. 245, 266-68 (1962).
vention, thereby incorporating the crossed check and payable in account check principles as part of its domestic law. In addition, the Italian law incorporated a provision recognizing the "non-transferable" check. The Italian writer, Messineo, in explaining the distinction between the "non-transferable" and the non-negotiable check, has stated:

[T]he [non-transferable] check may not be transferred except to a banker and with the purpose of collection; the indorsement made to another person, or further made by the bank, shall be held as not being written. The clause "not transferable" has greater efficacy than the clause "not to order," because it makes non-valid, not only the indorsement, but also the assignment (cesión ordinaria) of the check.

The English crossed check practice was unknown to German law prior to the Geneva Convention. The German Law Regarding Checks of 1933 adopted articles 37 and 38 of the Convention, which embody the crossed check principles, subject to the qualification that these rules were to come into force at a later time to be determined

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69 Id. art. 43. The provision is as follows: “The check issued with the clause ‘non-transferable’ may not be paid except to the payee or, on his demand, by crediting it to his account. The latter [i.e., the payee] may not indorse the check unless to a banker for collection who may not further indorse it. Indorsements made in spite of this prohibition shall be considered as not being written. The cancellation of this clause is considered as non-existent.

“He that pays a non-transferable check to a person different from the payee or from a banker indorsing it for collection shall be liable for the payment.

“The clause ‘non-transferable’ must also be affixed by the bank [upon the check] upon demand of its customer.

“The same clause may be affixed by an indorser with the same effect.

“The provisions of the present article shall be applicable solely to the check payable in the territory of the Kingdom or in territory subject to Italian sovereignty.”

See Appendix E for an illustration of an Italian “non-transferable” check.

M. Tondo, MANUALE DI GIURISPRUDENZA IN MATERIA BANCARIA 155 (1964) (assengo bancario, assengo circolare e titoli speciali) in discussing the non-transferable check has stated that “[t]he Supreme Court in a recent decision has maintained, also, that the drawee Bank (banca trattaria) that pays to a person other than the acceptor or payee (prenditore) or the indorsee bank for payment purposes, will be subject to repeat the payment even if the error in identification of the accipiens is not due to dolus or grave fault; the 2d par. of art. 43 l.a. must be construed in the sense that the drawee (trattario) is released only if it pays the acceptor or payee (prenditore) or the indorsee bank for payment, and the identification system is left to its discretion because it pays on its own risk and liability, and therefore it will not revert in its favor the total absence of fault due to erroneous identification.”

70 F. Messineo, MANUALE DI DIRITTO CIVILE E COMMERCIALE 408 (1959).

71 A. Baumbach & W. Hefermehl, WECHSELGESETZ UND SCHECKGESETZ 399-400 (1962).
by the Reich Minister of Justice. It must be noted, however, that as of the time of this writing, the Minister of Justice (now Federal Minister of Justice) has not ordered the cross check rules put into operation.

While the crossed check is an English invention, the "account payee" check (Nur zur Verrechung or Verrechnungsscheck) (only for set-off in account) is a German development which was recognized by article 39 of the Geneva Convention and was rearticulated in the German Law Regarding Checks of 1933. The Nur zur Verrechung check is designed for a cashless payment; it would not be permissible for a drawee to pay the presenter-holder in cash even though he might be a customer of the drawee. Payment would have to be made by crediting his account. In the event that the presenting holder should open an account with the drawee at the same time as he presented the Nur zur Verrechung check, the drawee must use particular caution in order to prevent a circumvention of the mandate on the check. If the drawee should pay cash for this kind of a check, it is doubtful whether he could escape liability by showing freedom from negligence in other aspects of the payment. Although neither the Geneva rules nor the German law literally forbid the negotiation or transfer of the Nur zur Verrechung check, it has been stated that if a third party takes such a check he does so at his peril, for he is put on notice of a possible infirmity. The negotiability

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73 See text accompanying notes 45-46 supra. See generally Crauford, Differences Between the English and German Law Relating to Negotiable Instruments, 6 INT'L & COMP. L.Q. 618, 640; Schuster, The German Statute as to Cheques, J. COMP. LEG. (n.s.) 79 (1908).


The provision for the Verrechnungsscheck (check only for set-off in account) reads:

I The issuer as well as any holder of a check may, by a notice put on the front side of a check crosswise, reading "only for set-off in account," or by some other notice with the same meaning, prohibit that the check be paid in cash.

II The drawee can, in such a case, redeem the check only by way of crediting the amount (Verrechung, Ueberweisung, Ausgleichung). The fact of crediting amounts to payment.

III The striking of the notice "Nur zur Verrechung" is considered not to have occurred.

IV The drawee who acts contrary to the above provisions, is liable for damages but only up to the amount of the sum of the check.

See Appendix F for illustrations of the Nur zur Verrechung check.

75 A. Baumbach & W. Hefermehl, supra note 71, at 399-400.
ity of this type of check is thereby impeded.  

III. Latin America

This section of the article will explore the influence of the English and Geneva Check Convention rules on Latin American law. It is intended as a survey of the Latin American practice rather than as an in-depth analysis of such practice.

Both Panama and Colombia have adopted the Negotiable Instruments Law of the United States, but only Colombia has engrafted the N.I.L upon an existing codification dealing with crossed checks. The Colombian law provides for general and special crossings in a manner similar to the English practice. Unlike the English practice, however, but similar to the Geneva Convention rules, no provision is made for insertion of the words “not negotiable,” which would signify that one who receives an instrument with such notation could not have nor transmit more rights in it than his transferror possessed. It is further provided in the Colombian law that the drawee is made liable to “the true owner of the check” for any loss suffered as a consequence of irregular payment. It should be noted that this phrase, “the true owner of the check,” is found in the English rule but was not incorporated into the Geneva Check Convention. The Colombian law makes no provision for checks payable to the account of the payee.

76 Id.

77 It is interesting to note Stanowsky’s discussion of the former Argentine crossed check rules and their relation to English and Geneva Check Convention rules: “If in the legislation of checks in general is the application, in principal, of the convention of Geneva, the same may not occur with crossed checks, of purely English origin and of great root (gran arraigo) in our country [Argentina], in such form that it is applied in practice in spite of the errors of our positive legislation.

“The Convention of Geneva, although it pays attention to crossed checks and [checks] for bookkeeping, is not executed with the precision and amplitude of the English legislation.

“In the first place, it [the Geneva Convention] pays no attention to the clause not negotiable, which in a general crossing as well as a special crossing, signifies that he who receives said check does not have nor may he transmit more rights over the same than he who delivered it to him. The clause “not negotiable” does not impede the circulation and, therefore, the transmission of the check by indorsement. It only limits the effects of the same on account of third persons.” 2 M. SATANOWSKY, TRATADO DE DERECHO COMERCIAL 140-41 (1957).

78 Law of March 13, 1917, Ley 52 de 1917 (Panama); Law of July 19, 1923, Ley 46 de 1923 (Colombia). See also the special law for checks of Dec. 16, 1916, Ley 75 de 1916 (Colombia).

79 Special law for checks of Dec. 16, 1916, Ley 75 de 1916, arts. 8-10.

80 Id. art. 10.
The former version of the Peruvian crossed check law was a reproduction, with minor omissions, of a provision of the Commercial Code of Spain. This Peruvian law was amended in 1967 to establish more comprehensive crossed check rules. It now provides that a check may be crossed generally or specially. It is crossed generally if the crossed lines are present either without further notation or with the word "bank" or an equivalent term. The crossing is special if the name of a specific bank is placed between the lines.

The crossing may be either general or special and may be made by the drawer or by the holder when the check has been issued without a crossing. When a specially crossed check has been delivered to the proper bank that bank may, in turn, cross it again to another bank for collection. Also, a bank which receives a generally crossed check may cross it specially to its own name. "The generally crossed check may only be paid by the drawee to another bank or to its [own] customers." The specially crossed check "may only be paid by the drawee to the designated bank; and if the latter is the drawee, to its [own] customer." The designated bank may, however, "have recourse to another bank in order to collect the check." A bank may only acquire a crossed check from one of its customers or from another bank. It may not credit it (ingresar lo a caja) for the count of other persons, except those previously mentioned ["collecting banks"].

It should be noted that these crossed check provisions, like the Colombian provisions, make no mention of inserting the words "not negotiable" between the crossed lines. However, the rule that banks may not acquire crossed checks except from one of their customers would seem to restrict the application of the negotiability concept to a limited class of potential holders. Further, a separate provision deals with the "non-transferable check" in a manner unique to Latin America. This most interesting provision is as follows:

The check with the clause "not transferable," "not negotiable" or other equivalent may only be paid to the person in whose favor it is drawn, or, to his asking [i.e., a check drawn payable to X or to the

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81 CODIGO DE COMERCIO art. 532 (1902) (Peru), reproducing CODIGO DE COMERCIO art. 541 (1886) (Spain).
82 Ley No. 16557, effective Sept. 1, 1967.
83 Id. art. 147.
84 Id. art. 148.
85 Id. art. 149.
86 Id. art. 150.
order of X], it may be credited in his current account, save [when it is] indorsed simply to a bank in order to effect its collection.

The mentioned clause made by the indorsee produces the same effects.

The drawee who pays a non-transferable check to a person different from the holder or the indorsee bank for collection shall be responsible for the effectuated payment.

Indorsements made in spite of the prohibition, as well as the barring (tarjadura) of the clauses provided in the present article, shall be taken as not being made.92

This new Peruvian check law also has enacted the payable in account concept. It is provided that the drawer as well as the holder of a check may prohibit its payment in cash by placing the words “for credit in account (para acreditar on cuenta) or other equivalent”93 on the face of the check. The drawee bank must heed the order by crediting the value of the check in the customer's account, but the drawee bank is obligated only to credit the check for those who have a current account.94

It is submitted that the Peruvian version of a non-transferable check has eliminated the real need for the crossed check or the check payable in account rules because it accomplishes the objectives sought by having a crossed check made payable in account, and, in addition, prevents an indorsee from obtaining title to such a check. Adoption of a similar rule in the law of the United States would alleviate many of the problems outlined in the introduction to this article.

The Bolivian Check Law of 191295 apparently is verbally and conceptually different with respect to crossed check rules from any of the other Latin American codifications. Under Bolivian law either the drawer or the holder has the right to restrict payment of the check to “a determined person or society.”96 This is accomplished by placing two parallel lines on the face of the check and inserting the words “Crossed in favor of . . . [and] by adding the complete name of the comptroller (interventora), person or society.”97 In this case, the check is “crossed in particular and it shall not be negotiable,” and the drawee may not pay it except to a bank or society whose name is indicated on the check.98 Although the phrasing is awkward, it would appear that the “crossed in particular” check (specially

92 Id. art. 153.
93 Id. art. 152.
94 Id.
96 Id. art. 15.
97 Id.
98 Id.
crossed check to use the English terminology) in Bolivia is non-negotiable, while the specially crossed check requires the addition of the words "non-negotiable" to achieve the same result in England.

A check "crossed in general" is one with the words "crossed in general" inserted between two parallel lines. A check in this form must be paid to a "mercantile society legally constituted in the country [Bolivia]." The payor who violates the "crossed in particular" and "crossed in general" check payment rules is responsible to the drawer for any damages. It should be noted that the Bolivian Check Law does not recognize the "account payee" check.

In 1919, seven years after Bolivia recognized the crossed check, Uruguay adopted the crossed check concept but with differing details. The generally crossed check in Uruguay must bear the word "bank" between two parallel transverse lines, and the drawee may pay only a bank in this case. The specially crossed check must contain the name of the designated bank between the two lines, and the drawee may not pay it "except to the named bank or to another bank duly authorized to make collection." Either the drawer or the holder may cross a check either generally or specially. The holder of a generally or a specially crossed check "may add the words 'not negotiable.' These words signify that he who receives said check does not have nor may he transmit more rights about the same [check] than he who has received it." It is surprising to observe that this rule allowing the holder to insert the words "not negotiable" does not seem to afford a similar right to the drawer.

An Uruguayan bank that pays a generally or specially crossed check to a non-bank, or that pays a specially crossed check to a bank whose name does not appear on the check or which was not specially authorized to collect it, shall respond to the drawer for the amount of the check plus interest. Conversely, the drawee of a generally or specially crossed check does not incur any responsibility if it pays in accordance with these rules "even when the check has been delivered for payment by a person who has no right to its amount." As a corollary to this rule, a bank which in good faith and without negligence credits the account of a customer with a generally crossed check or one crossed specially to his name, when this customer has

99 Id.
100 Id. art. 16.
102 Id. art. 23.
103 Id. art. 24.
104 Id. art. 26.
105 Id. art. 27.
106 Id. art. 29.
no right to the check or when his right is defective, does not incur responsibility in any respect to the true owner merely by reason of having accepted payment.\textsuperscript{107}

It might be thought that the previously discussed codes are merely vestiges of early English and Continental European influence in Latin American commerce. However, the fact that relatively recent reforms in some Latin American countries have reincorporated the crossed check and account payee concepts would seem to indicate a satisfaction with the system. For example, the 1963 Argentine check legislation reforming the Code of Commerce has re-enunciated these principles.\textsuperscript{108} It is provided there, somewhat in accord with the English rule, that a general crossing may consist simply of two lines drawn on the face of the check, or it also may include the word “banker” between these lines, and, also, the words “not negotiable.”\textsuperscript{109} The special crossing procedure is the same as in England. The general crossing may be converted into a special crossing merely by adding the name of the bank, but the special crossing may not be converted back into a general crossing.\textsuperscript{110} The drawee may pay only to a bank in the case of a general crossing and only to the specified bank “or to another indicated bank” in the event of a special crossing.\textsuperscript{111} The drawee or other bank which does not observe these rules shall be liable for the damages up to the amount of the check.\textsuperscript{112} Also, Argentina’s recent codification has adopted with only slightly different wording the “account payee” concept articulated in article 39 of the Geneva Check Convention.\textsuperscript{113}

Costa Rica reformed its Code of Commerce\textsuperscript{114} in 1964, and also continued the crossed check concept, though more concisely worded. In Costa Rica, for a general crossing the word “bank” must be inserted between the two lines; in Argentina, the two lines alone are sufficient. “If to the word ‘bank’ there has been added the particular name of an establishment of this class [thereby creating a special

\textsuperscript{107} Id. art. 30.


\textsuperscript{109} Decreto-Ley No. 4776, art. 44 (1963), translated in complementary laws section of ARGENTINE COMMERCIAL CODE at 318 (Argentlaws Pub. ed. 1963). For a penetrating critique of the “non-negotiable” aspects of this Argentine law, see Bustamante, El Cheque y La Clausula “No Negociable”, 33 LECCIONES Y ENSAYOS 167 (1966).

\textsuperscript{110} Decreto-Ley No. 4776, art. 44 (1963), translated in complementary law section of ARGENTINE COMMERCIAL CODE at 318 (Argentlaws Pub. ed. 1963).

\textsuperscript{111} Id. art. 45.

\textsuperscript{112} Id.

\textsuperscript{113} Id. art. 46.

\textsuperscript{114} CODIGO DE COMERCIO (1964).
The drawee is liable to the "true owner of the check" if it makes payment to a presenter which is not a bank in the case of a general crossing, or is not the specified bank in the case of a special crossing. The clearest expression of the crossed check principles is found in the 1951 Check Law of the Dominican Republic. The crossed lines must be written in ink, and these lines alone are sufficient to create a generally crossed check. If the name of a particular bank is inserted between the lines, then it is crossed specially. The generally crossed check "may only be paid by the drawee to its clients or to another bank." This is one of the few codes which provides clearly for the situation in which both drawer and payee are clients of the same bank. A specially crossed check "may only be paid by the drawee to the designated bank, and if the latter is the drawee, it may only pay to its customers." In all these cases, the bank designated in the special crossing may utilize another bank in order to collect the check. Banks may acquire crossed checks only for their own customers or for another bank; they may not carry out the collection except for the accounts of their customers or of other banks. "[T]he person who has disposable funds" in a bank is the only one who shall be considered a customer of that bank. This definition of a "customer of a bank" bears great resemblance to the English rule. The drawee's liability for making an incorrect payment is limited to the amount of the check.

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115 Id. art. 826.
116 Id. art. 827.
117 Código de Comercio (F. Hernandez ed. 1950) (Dominican Republic), as modified, Ley De Cheques No. 2859, arts. 37-38 (1951). The "account payee" check is also delineated in greater detail than in other Latin American codes: "The drawer or the holder may prevent the check from being paid in cash, and for this end they may write or stamp with ink, in a conspicuous form, clearly and legibly, the statement 'for credit in account of' or other equivalent expression, followed by the name of the owner. In these cases the check may only be instruments for settlements of accounting which do not represent payment in cash. "The drawee or any person who, notwithstanding the mention 'for credit in account of' followed by the name of the owner, or other equivalent expression put on the check, pays it or negotiates it for cash, is responsible for the damage which said act has caused, without said responsibility exceeding the amount of the check." Id. art. 39.
118 Ley De Cheques No. 2859, art. 37 (1951).
119 Id. art. 38.
120 Id.
121 Id.
122 Id.
123 Id.
The Nicaraguan crossed check rules\textsuperscript{124} were derived from the provisions of the former Argentine Code of Commerce. The crossing of two lines on the check apparently is not sufficient as a general crossing unless the words "not negotiable" also are inserted between these lines, while the special crossing requires "the name of a banker or other determined person, followed or not followed by the words 'not negotiable.'"\textsuperscript{125} In accordance with the usual rules, the drawee of a generally crossed check must pay it to another bank, while the drawee of a specially crossed check must pay it to a "designated person [or banker] or to another banker duly authorized to make collection."\textsuperscript{126} In order to deposit a specially crossed check, the holder may specially cross it again to another bank.\textsuperscript{127} The drawee who pays a crossed check to a non-bank or who pays it to a bank not named on the check or one not specially authorized to make collection "shall respond to the drawer for the amount of the check, damages and interest."\textsuperscript{128} This latter clause, which is unique in Latin America, possibly could subject a drawee to extensive damages.

The Ecuadorian Code permits a general crossing to be made by the simple writing of two lines without the addition of the word "banker," while the special crossing requires the designation of the particular banker or bank.\textsuperscript{129} It would appear that the draftsmen of the Code inadvertently omitted any provision governing the liability of the drawee who pays a crossed check to a non-bank.

The Chilean provisions resemble the provisions of the Check Law of the Dominican Republic to some degree, in that two crossed lines alone on the face of the check are sufficient to constitute a general crossing, while the insertion of a "name of a determined bank" between these lines will constitute a special crossing.\textsuperscript{130} On the other hand, the Chilean law provides that if the drawee fails to pay a bank in the case of a general crossing or the particular bank in the case of a special crossing it is "responsible for the consequence."\textsuperscript{131} This phrase apparently places no ceiling upon the damages which may be assessed against the drawee.

The crossed check rules of the Mexican and Honduran Codes of Commerce are identical, with the exception that Mexico uses the

\textsuperscript{124} \textit{Código de Comercio de Nicaragua Concordado y Anotado} arts. 698-701 (1949).
\textsuperscript{125} Id. art. 698.
\textsuperscript{126} Id. art. 699.
\textsuperscript{127} Id. art. 700.
\textsuperscript{128} Id. art. 701.
\textsuperscript{129} \textit{Código de Comercio} art. 494 (1960).
\textsuperscript{130} \textit{Ley Sobre Cuentas Corrientes Bancarias y Cheques} No. 3777, art. 31 (1943) in \textit{Código de Comercio, Apéndice} (1964) (edición oficial) (Chile).
\textsuperscript{131} Id. art. 32.
phrase "institution of credit" to signify a bank while Honduras uses the phrase "banking establishment." The presence of two crossed lines on the face of a check is sufficient for a general crossing, while the insertion of the name of a particular bank between these lines produces a special crossing. In both countries, the drawee who pays a non-bank or the wrong bank, "is responsible for the irregularly made payment." Neither country provides for the insertion of the phrase "not negotiable" between the crossed lines.

Tena, the eminent Mexican author, explains the mechanics of crossed check payment in Mexico as follows:

Said crossing indicates that the title (titulo—instrument) may only be collected by a credit institution, and its purpose is to make payment to illegitimate holders more difficult. In effect, the fact that two bankers must necessarily concur for the collection of the check, removes the possibility of collection by a false holder. . . . Such procedure, however, does not cut out all of the risks. It is possible that he who has acquired a check by theft may endorse it to a bank for collection and thusly obtain payment without difficulty. In order to avert this danger, the English—say Lacour and Bouteron—have the custom to inscribe on the check the clause "not negotiable."

In discussing the success of crossed check rules in protecting the drawer, Tena critically observes:

In our opinion, the danger which we try to eliminate by means of crossing, nevertheless subsists in view [of the fact] that not even the clause "not negotiable" impedes the check from being endorsed for collection as determined in Article 201. The advantage which crossing furnished is, therefore, very relative, and perhaps this is due to the fact that almost nobody uses it [the crossing], this institution being all but unknown in commercial practice. Mexico and Honduras have virtually the same rule regarding account payee checks. In discussing the "account payee" check, Tena has stated:

Both the drawer and the holder may prohibit the check from being paid in cash, by inserting on it the clause "for credit to account" or other equivalent. Such clause supposes the pre-existence of accounts

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132 CODIGO DE COMERCIO art. 719 (1950) (Hond.); CODIGO DE COMERCIO art. 197 (1966) (Mex.).
133 F. TENA, TITULOS DE CREDITO 331 (1956).
134 Id. at 331 n.205.
135 CODIGO DE COMERCIO art. 620 (1950) (Hond.); CODIGO DE COMERCIO art. 196 (1966) (Mex.). The wording of both codes is the same except the italicized words are omitted in the Honduran version: "The drawer or the holder may prohibit the check from being paid in cash, by means of the insertion in the document of the expression ‘for credit in account.’ In this case, the drawee may only make payment by crediting the amount of the check in the account which it carries or opens in favor of the holder. The check is not negotiable starting from the insertion of the clause ‘for credit in account.’ The clause may not be erased.

"The drawee who pays in another manner, is responsible for the irregularly made payment.”
between the parties; for this Article 42 of the Uniform Law for Checks establishes that “the drawee is not obligated to credit the check except to a current account” or, as our [Mexico] Article 198 states “the drawee only may make payment, by crediting the amount of the check in the account which it bears or opens in favor of the holder.” This does not mean that the drawee is obligated to open an account: it may refuse to do so, because there may exist undesirable persons to whom it does not want to deliver a book of checks for fear that they will abuse the same.

As a matter of course the referred to clause is irreconcilible with the negotiability of the check, and it [the clause] may not be erased. The drawee who pays the check in a different manner is responsible for the payment which was irregularly made.136

In discussing the “account payee” practice, the Argentine writer Satanowsky has stated:

This . . . clause produces effects similar to those used in banking practice, to wit: “Not negotiable. For deposit in the account to whom this order is extended” and which originated in the English clause: Crossing a/c payee account payee whose meaning is: “Pay it for the account of the person designated on the check as being the person who has a right to payment.”

It [the account payee check] does not appear legislated in the law of 1882 [the English law] . . . Bouteron points out the effects of said clause, in the sense that it constitutes a warning to bankers that this check must only be deposited in the account of the designated person, and the non observances of the warning makes him [the banker] responsible for the consequences of payment, since the banker is considered as being negligent.137

In conclusion, the provisions of three other countries should be noted. Guatemala apparently does not countenance the crossed check concept, but it does provide for the “account payee” check in a manner virtually indistinguishable from the Geneva Check Convention rule.138 El Salvador generally tracks the crossed check rules of the Geneva Convention, but adds a provision which appears to have English antecedents.139 Probably the tersest articulation of the crossed check concept in Latin America appears in Brazilian law:

The crossed check, that is a check crossed by two parallel lines, can only be paid to a bank; and if this crossing contains the name of a bank, payment can be made only to this bank.140

Conclusion

The objective of the crossed check, account payee and other checks discussed in this article is to ensure that the proceeds of such an instrument are received by the payee. The application in the United

136 F. Tena, Titulos de Credito 332 (1956).
137 2 M. Satanowsky, Tratado de Derecho Comercial 140-41 (1957).
138 Código de Comercio art. 794 (1942).
139 Código de Comercio art. 456 (1947).
140 Lei N. 2.591 de 7 de Agosto de 1912, art. 12, in Código Comercial Brasileiro 338-40 (A. Bevilaqua ed. 1953).
States of negotiability principles to checks fosters the problems presented in the Introduction. The ideal solution to these problems would be the adoption of a check form which would prohibit the cash payment by the drawee and which would require that payment be made only by means of a credit to the account of the payee.

The account payee check implements these aims and, in addition, successfully reduces the risks of wrongful payment. The widespread adoption of this check form seems doubtful, however, since many people do not maintain bank accounts. Because the maintenance of a bank account is a prerequisite to receipt of payment by the payee of such an instrument, its practicality thereby is severely curtailed.

The enactment of crossed check rules in the United States would reduce substantially the problems discussed in the Introduction. English experience shows, however, that not all frauds would be prevented, since the crossing does not prevent assignment. In addition, the crossed check rules seem unduly complicated, and it is felt that protection could be afforded the payee in a less cumbersome manner.

It is submitted that the Italian and Peruvian “non-transferable” checks, which can neither be negotiated nor assigned except to a bank for collection, would effectively eliminate most frauds in the simplest possible manner. Pursuant to these rules, the drawee may pay the check only to a collecting bank or in cash to the payee. This would avoid the problems of receipt of payment for the person who does not maintain a checking account. A dishonest employee who prepares payroll checks for nonexistent employees would be required to furnish identification papers to his confederates in order to obtain payment in cash or to establish a fraudulent account in order to have another bank collect the checks. Although either could be done, the risk of early discovery would be enhanced. On comparison with the other available check forms, this instrument would be the one most easily adaptable to the American financial structure, and therefore the one most likely to facilitate the successful receipt of funds by the party properly entitled to them.
Appendix A

C. Hannaford, *Cheques* 81 (1923), gives the following illustrations of generally crossed checks:

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>(b)</td>
<td>(c)</td>
<td>(d)</td>
</tr>
</tbody>
</table>


Appendix B

C. Hannaford, *Cheques* 81 (1932), gives the following illustrations of specially crossed checks:

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>(b)</td>
<td>(c)</td>
<td>(d)</td>
</tr>
<tr>
<td>Lombard Bank Not Negotiable, Lombard Bank Not Negotiable, Lombard Bank Manchester Not Negotiable, Lombard Bank Manchester Not Negotiable,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lombard Bank Not Negotiable, Lombard Bank Not Negotiable, Lombard Bank Manchester Not Negotiable, Lombard Bank Manchester Not Negotiable,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lombard Bank Not Negotiable, Lombard Bank Manchester Not Negotiable, Lombard Bank Manchester Not Negotiable, Lombard Bank Manchester Not Negotiable,</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The following example of a "Not Negotiable A/C Payee Only" check was supplied by the London branch of the Chase Manhattan Bank:

```
56/78
WADDIE & CO. LIMITED 00-12-34
Security Printers
EDINBURGH

ST. STEPHEN'S BANK LIMITED
SILVER STREET BRANCH EDINBURGH

Cheque No. 123456*
PAY TO THE ORDER OF ST. STEPHEN'S BANK LIMITED
£. 00 00 00

For and on behalf of WADDIE & CO. LIMITED
Director

By Waddies of Edinburgh

8

£123456* 00012345*

Appendix C

C. HANNAFORD, CHEQUES 81 (1923), gives the following illustrations of "account payee" checks:

<table>
<thead>
<tr>
<th>% Payee</th>
<th>% Payee</th>
<th>Lombard Bank % Smith &amp; Co.</th>
<th>Lombard Bank % Smith &amp; Co.</th>
<th>Lombard Bank % Smith &amp; Co.</th>
<th>Commissions of Taxes %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix D

The Paris branch of the Bank of America supplied the following example of a generally crossed check:

```
No 0148162

Payez contre ce cheque

A Y'Ordre de

PAYABLE A
PARIS
28, Place Vendome

0148162 0008812138848
```

Appendix E

The Italian branch of the Bank of America furnished the following example of a "non-transferable" check:

```
NON TRASFERIBILE
```

November 1968] NON-NEGOTIABLE CHECKS 301
Appendix F

The German branches of the Chase Manhattan Bank and the Bank of America furnished the following examples of the Nur zur Verrechung check:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0106552</td>
<td></td>
<td>DM 4272</td>
</tr>
</tbody>
</table>

The Chase Manhattan Bank
National Association
ZWEIGNIEDERLASSUNG FRANKFURT (MAIN), TAUNUSANLAGE 11

Zahlen Sie gegen diesen Scheck aus meinem - unserem Guthaben

Deutsche Mark ____________________________ Pf wie oben

an ______________________________________
or Überbringer ____________________________

(Ausstellungsamt) den ____________________ 19

(Aussteller)

Frankfurt/Main, Germany

Pay against this order to the order of

* U.S. Dollars ____________________________
* Deutsche Mark __________________________

* Strike out currency not applicable

Signature
In explaining the idea of a postcard check, Mr. Joseph H. Kohl, Assistant Manager of the Dusseldorf branch of the Bank of America, stated to the author that: “You will note that . . . [this] check is printed in the form of a postcard; it is very popular in Germany. Because of the risks involved, they are limited to an amount of DM3,000 each (about $750). In addition, they are always imprinted with the restrictive remark ‘Nur zur Verrechnung.’ Our normal checks do not show this restriction, but the drawer may add this remark to any check if he wants to (rubber stamps are readily available for this purpose at each stationery shop).” Letter from Mr. Joseph H. Kohl, Assistant Manager of the Dusseldorf branch of Bank of America, to the author, Dec. 15, 1967, on file in Hastings Law Library.