Syllabus

There is nothing quite as wonderful as money.
There is nothing like a newly minted Pound ....
You can keep your Marxist ways,
But it’s only just a phase;
For it’s money, money, money makes the world go 'round.\(^1\)

Every credit card application we send in, we get two more
in the mail. Here’s one from a bank I never heard of in
North Dakota. Fill it out. Fill them all out. It’s the last
great pyramid scheme in America.\(^2\)

Why Payment Systems?

People want things and services that they do not own and cannot produce or perform – or, at least, they cannot do so efficiently. People have or can efficiently produce other things, or render other services, beyond their momentary wants. How do we match people who want things and services they cannot efficiently produce or render at a given point in time with other people who, at that same given point in time, have or can efficiently produce things or render services beyond their own momentary wants?

For much of human history, people who want things or services they cannot efficiently produce have used threat or force to compel, or stealth or deceit to relieve, other people to part with their surplus things and services (and often more). Although compulsion and theft seem to be inescapable facts of life, neither is a stable or desirable mechanism for efficiently allocating property and services over time.

Barter offers a more peaceful alternative, allowing me to trade my extra chickens or butter– in one or more transactions – for the bread, wine, and haircut I want and cannot efficiently provide myself. While more genteel than compulsion or theft, barter presents logistical problems: How do I find someone who has what I need or want when I need or want it and needs or wants what I have to barter when I have it? How do I store or secure what I have to barter until I’m ready and able to make a desirable trade? How do I transport what I’m going to barter so that what it retains as much of its value as possible?

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\(^1\) Monty Python’s Flying Circus, Money Song, on Monty Python’s Previous Album (1972).

\(^2\) A Civil Action (Touchstone Pictures 1998).
Fortunately, 4,000-5,000 years ago, some clever Sumerian or Mesopotamian came up with the idea of money as a proxy for something of value; about 2,700 years ago, some clever Lydian, Greek, or Persian came up with the idea of minting coins out of precious metal; about 1,000 years ago, China’s Song dynasty created the first stable and widely-circulating paper currency; and a number of ancient Mediterranean civilizations, as well as their counterparts across the Middle East, India, and China developed systems of credit earned and pledged.

Over the centuries and across cultures, money has taken many forms, but with the same underlying purpose: providing a relatively portable, widely-accepted means for someone to sell the things or services she has or can produce or render in surplus and to purchase what she needs or wants from one or more persons who have a surplus of those things or services (or who value them less than the buyer). Likewise, over the centuries and across cultures, credit has taken many forms, all with the same underlying concept: allowing someone to sell the things or services she has in surplus when she has them and to purchase what she needs or wants when she needs or wants them.

Payments Law in an Era of Change

In 1989, the National Conference of Commissioners on Uniform State Law (NCCUSL) and the American Law Institute (ALI) – the entities responsible for the Uniform Commercial Code (UCC) – promulgated UCC Article 4A (Funds Transfers). All 50 states and the District of Columbia enacted Article 4A in relatively short order. In 1990, NCCUSL and ALI comprehensively revised UCC Articles 3 (Negotiable Instruments) and 4 (Bank Deposits and Collections). Every state except New York (still the financial hub of the Western hemisphere) eventually embraced the 1990 revisions. In 1995, NCCUSL and ALI comprehensively revised UCC Article 5 (Letters of Credit). Every state and D.C. enacted Revised Article 5. In 2001, NCCUSL and ALI comprehensively revised UCC Article 1 (General Provisions). To date, 39 states (including Nevada) have enacted Revised Article 1 – although all 39 enacted versions differ from the “uniform” version NCCUSL and ALI promulgated. In 2002, NCCUSL and ALI promulgated a number of amendments to Revised UCC Articles 3 and 4. As of August 1, 2010, only ten states (including Nevada) have enacted those 2002 amendments. In 2003, NCCUSL and ALI comprehensively revised UCC Article 7 (Documents of Title). To date, 38 states (including Nevada) have enacted Revised Article 7. And that’s just the UCC.

Congress, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Federal Trade Commission, the Federal Reserve System, the newly-created Consumer Financial Protection Bureau and Financial Stability Oversight Council (two important products of the Dodd-Frank Act, which President Obama signed into law in July), as well as other federal agencies, state legislatures, and state administrative agencies, enact laws and promulgate regulations and rules affecting modern payment systems. In addition to governmental and quasi-governmental lawmakers and regulators, domestic and international non-governmental actors play important roles affecting payment system availability and

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3 Sorry. It was too good a pun to pass up.
operations. For example, NACHA (f.k.a. the National Automated Clearing House Association) maintains and regularly updates rules for electronic debits and other electronic funds transfers that supplement the applicable federal statute (the Electronic Funds Transfer Act) and corresponding federal regulations (Federal Reserve System Regulation E) for any bank or other financial institution that wishes to use NACHA’s network. Likewise, the International Chamber of Commerce (ICC) establishes Uniform Customs and Practice for Documentary Credits (UCP600) which parties to domestic and international commercial letters of credit, one of the payment systems we will study, almost invariably incorporate by reference – a practice that UCC Article 5 (governing letters of credit) expressly authorizes.

Much of this legislation, regulation, and standardized practice has come in reaction to changes in the ways banks, their customers, and other players in the U.S. and world economies conduct their commercial and financial affairs. The current economic and financial crises and the rapid pace of technological innovation (ironically, one of the factors exacerbating the crises) has provoked and will continue to provoke new legislation, new regulations, and updated standard practices. Because payment systems make possible all manner of commercial and consumer transactions, this rapidly-changing legal landscape presents challenges, but also creates opportunities, for lawyers advising or representing consumers or businesses in most types of transactions and litigation, and for law students who aspire to do so.

Goals and Objectives

I aspire, at a minimum, to teach you the fundamentals of the law governing and the practice of payments for real and personal property and services, including

♦ the scope of UCC Articles 3, 4, 4A, 5, and 7 and other relevant statutory law and administrative regulations and rules,

♦ the extent to which UCC Article 1, common law, and private law – such as the aforementioned NACHA Rules and UCP600, as well as private agreements between parties to payments transactions – supplement or supersede UCC Articles 3, 4, 4A, 5, and 7 and other relevant statutory law and administrative regulations and rules,

♦ what rights and responsibilities each payment system bestows upon the parties to a payment transaction and other affected parties, and

♦ foundational legal concepts like negotiability, holder in due course, shelter, guaranty, surety, indemnification, subrogation, as they relate to payment transactions,

as well as some of the legal and economic theory and practice underlying payments law and shaping its continuing development. I also hope to inspire you to critically evaluate the applicable law, relevant authorities, and the conclusions one should draw from them.
Class Meetings

This class will meet from **4:35 to 6:00 p.m.** every **Monday and Wednesday** beginning August 23rd and ending November 22nd – except for Monday, September 6th (Labor Day) – in **Room 112**. If I must miss a class meeting, I reserve the right to schedule a make-up class. In addition to the scheduled class meetings, I may hold an optional review session prior to the final exam. If so, I will announce the date, time, and location well in advance.

*A Special Note about Our Class Meeting Time*

There is only a five-minute break, rather than the customary ten minutes, between the end of classes scheduled to meet from 3:05-4:30 p.m. (Evidence, IP I, and International Human Rights) and the scheduled starting time for our class and that there is only a five-minute break between our class’s scheduled ending time and the scheduled starting time for Judge Markell’s 6:05-7:30 p.m. Secured Transactions class, which I imagine some of you are taking. This is less than ideal; but we will have to make the best of it. No class is scheduled to meet in Room 112 immediately before ours; so, I will make every reasonable effort to begin our class meetings at 4:35 p.m. and to end them no later than 6:00 p.m. Both will require your cooperation.

Office Hours

My office is **RAJ 428**. My posted office hours are **Tuesdays from 2:00 to 5:00 p.m.** If I have a conflict on a given Tuesday, I’ll hold additional office hours that afternoon or later the same week. I will also be available immediately after class most Mondays and Wednesdays.

Any other time I am in my office, feel free to drop in. I will either see you then or arrange a time to meet with you. I will do my best to accommodate any reasonable request for an appointment during or outside of my office hours. You may also contact me by e-mail me at keith.rowley@unlv.edu or using the LexisNexis Web Course Discussion Board (see below). I check my e-mail frequently, usually beginning around 9:00 a.m. and often as late as 1:00 a.m., whether I am in town or not, and will check the Web Course daily. I will respond as promptly as I can and will generally “cc” the whole class unless doing so would be inappropriate.

*LexisNexis Web Course/Web Content*

No later than Wednesday, August 18th, I will create a restricted-access LexisNexis Web Course, to which I will post electronic copies of class announcements, the reading list, assigned readings not appearing in either the Mann text or the Mann, Warren & Westbrook statutory supplement, optional written assignments, topical outlines, PowerPoint slides, sample questions and answers, and useful links, and will include an interactive discussion board and an e-mail list. To access the Web Course, you must be registered for Payment Systems and must have a LexisNexis Custom ID or password. **If you do not have a LexisNexis Custom ID or a Lexis password, please get one as soon as possible.** If the e-mail address associated with your current LexisNexis Custom ID or a Lexis password is not the e-mail address you normally use, please update your e-mail address.
You should regularly check the e-mail address associated with your LexisNexis Custom ID and the Web Course for important announcements and content. I will also post some course materials to http://www.law.unlv.edu/faculty/rowley/payment_systems.htm and may post announcements, assignments, and assigned materials to the law school’s portal. Unless I inform you otherwise, I will not post anything to my UNLV website or the law school portal that I don’t post to the LexisNexis Web Course.

**Required Materials**

Our principal text will be Ronald J. Mann, *Payment Systems and Other Financial Transactions: Cases, Materials, and Problems* (4th ed. 2008). In addition, you will need the text of and official comments to the UCC and a variety of federal statutes and regulations, as well as the NACHA Rules, UCP600, ISP98, and other public and private domestic and international law and rules. *Comprehensive Commercial Law: 2010 Statutory Supplement* (Ronald J. Mann, Elizabeth Warren & Jay L. Westbrook eds.)\(^4\) reproduces the UCC and most of the other important sources of payments law, rules, and practices. Both titles are available from Aspen, various online booksellers, and the UNLV Bookstore. (You may also find one or two reference copies of each in the Wiener-Rogers Law Library.)

I will also periodically assign readings from other sources (including print and Web content from the Federal Reserve System and its international counterpart, at least in some respects, the Bank for International Settlements), which I will post to, or provide a link for on, the LexisNexis Web Course. I will make these additional readings available as far in advance as I can of the date we should begin discussing them.

**Recommended Materials**


MIT Press generously makes the entire Evans & Schmalensee text available for PDF download subject to a non-commercial use “license.” By contrast, Brookings Institution Press makes only the first chapter of Litan & Baily available for free download and Cambridge provides only a short “excerpt” of Mann’s *Charging Ahead*. Brookings does not discount Litan & Baily for educational use; I have not heard back from Cambridge about a student discount.

\(^4\) An earlier edition of Mann, Warren & Westbrook, *West’s Selected Commercial Statutes*, or Foundation’s *Commercial and Debtor-Creditor Law: Selected Statutes* will suffice if they provide the current official text of and comments to UCC Articles 1, 3, 4, 4A, 5, and 7, the current version of the Consumer Credit Protection Act (15 U.S.C. § 1601 *et seq.*) and accompanying regulations, the current NACHA Rules, the UCP600, and ISP98.
Somewhat embarrassingly, as of August 16, the Wiener-Rogers Law Library had none of these books. The electronic availability of Evans & Schmalensee mitigates that somewhat. Nonetheless, I will make certain that the library has at least one copy of each book available in the Reserve Room by the time classes begin. If I make any assignments from these books before then, I will provide you the relevant pages electronically or otherwise.

**Optional Materials**

Students looking for additional readings about topics we will cover this semester have several options – none of which stands out enough for me to recommend it over the others.

Both James J. White & Robert S. Summers, *Principles of Payment Systems* (2008), and Fred H. Miller & Alvin C. Harrell, *The Law of Modern Payment Systems* (2003 & Supp. 2009), which has been updated more recently, focus more narrowly than does Mann’s casebook: White & Summers make only passing mention of credit cards and electronic payment systems falling outside the scope of UCC Article 4A; Miller & Harrell essentially ignore letters of credit, but devote more space – particularly in the pocket part – to credit cards, debit cards, and e-payments.

William H. Lawrence, *Understanding Negotiable Instruments and Payment Systems* (2002), devotes relatively more attention to credit cards and other payment devices beyond the scope of UCC Articles 3 and 4, but is less timely – pre-dating the 2002 amendments to Articles 3 and 4 – and ignores (as do Miller & Harrell) letters of credit – a vitally important means of facilitating international payments and an increasingly important source of both payment and security in domestic transactions. Lary Lawrence, *An Introduction to Payment Systems* (1997), while devoting considerable space to credit cards, debit cards, and other forms of consumer electronic payment transactions as they existed in the mid-1990s and a couple of pages to letters of credit, is very dated. I find this disappointing because Lary Lawrence is unquestionably one of the leading authorities in this area of commercial law.

Frederick H. Miller, *The Lawyer’s Guide to Modern Payment Methods: ACH, Credit, Debit, and More* (2007), addresses more of the newer forms of payment than any of the foregoing, but almost completely ignores UCC Article 3 and is a bit too heavy on checklists and forms and too light on the law. The newest entry is Michael D. Floyd, *Mastering Negotiable Instruments: UCC Articles 3 and 4 and Other Payment Systems* (2008). Mike Floyd is one of the nicest guys I’ve met in the legal academy and he knows the “middle articles” well enough to be routinely invited to teach Payment Systems at Tulane, Alabama, and other “Top 50” law schools. While he – like Miller & Harrell and both of the Lawrences – essentially ignores letters of credit, Floyd devotes separate chapters to credit cards and debit card. On closer inspection, however, those chapters and the one on UCC Article 4A seem a bit thin. That said, his book is the one of this bunch most clearly written for the law student unfamiliar with these types of transactions and the laws governing them.

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5 This is the same person who co-authors Miller & Harrell’s *The Law of Modern Payment Systems*. Apparently, now that he has retired from teaching and joined a prominent Oklahoma City law firm, he can afford to have a longer name. (Just kidding. Sort of.)

For students looking to test their ability to apply the legal concepts about which you will read and we will discuss in class, the law library and UNLV Bookstore each have copies of James Brook, *Payment Systems: Examples & Explanations* (4th ed. 2010), Stephen M. McJohn, *The Glannon Guide to Commercial Paper and Payment Systems* (2009), and Gregory E. Maggs & Timothy R. Zinnecker, *Questions & Answers: Payment Systems* (2003).


Obviously, I do not expect any of you to read all of the foregoing this semester, this year, or even this lifetime. My aim is to offer you access to as much helpful information as you desire. I have my own copies of most of the above (except those in the immediately-preceding paragraph), as well as some other useful titles. If you find yourself pressed and unable to locate a resource that you want to review, come by my office. If I am in, and if the book you want is available, I will allow you to look at it in my office.

**Reading Assignments**

I will periodically distribute an updated Reading List, the first iteration of which is attached. **For the first week of class, read the items in Part I and II.A of the attached Reading List.** I will post all assigned readings not included in the required texts to the LexisNexis Web Course prior to the class meeting in which we will discuss them.

I reserve the right to modify assignments as circumstances dictate. (Given the highly fluid state of payments law and the practice, it’s almost certain to happen.) I will always try to tell you before the end of a particular day’s class what I expect to cover in the next class or two.
Grades

I will make every effort to fairly evaluate your exam, other written, and in-class performance and to assign you a course grade that fairly reflects that performance.

Exam

The largest component of your grade will be your performance on the final exam scheduled for **Friday, December 10th, at 9:00 a.m.** The final exam will include questions designed to test the breadth of your knowledge of the material we will have covered, the depth of your knowledge of particular topics, and your analytical skills. As the semester progresses, I will let you know the exam format and what materials you may use to assist you in taking the exam.

Written Assignments

I anticipate making periodic written assignments and will factor your performance on those assignments into your course grade, provided that doing so improves your course grade. Each written assignment will be “optional” in the sense that you may choose whether to complete an assignment or not. If you do, I will grade it; if you do not (or if you do, but perform poorly), it will not count “against” you, but the weight of your final exam grade will be more.

Possible Optional Paper

In light of the modest enrollment in this course as of August 16th, I may offer the option of writing a relatively short, but substantial, paper about or substantially related to one or more topics from this course. If I decide to do this, the paper grade could account for up to 25% of your course grade and would reduce the weight of your final exam grade if your paper grade exceeds your exam grade. (Alternatively, if you find a particular topic more interesting than the time we can devote to it in this course, I will be happy to talk with you about a directed research project.)

Class Attendance and Participation

Learning how to “think like a lawyer” about payment systems and related matters is best served by regular class preparation, attendance, and participation. I reserve the right to raise or lower your course grade by up to one-half letter (e.g., from B to B+ or from A- to B+) based on your attendance and class participation. Furthermore, ABA Standard 304(e) dictates that “[r]egular and punctual class attendance is necessary [for a student] to satisfy residence credit and credit hour requirements.” Therefore, I reserve the right to drop any student who misses seven or more class meetings (with or without excuse) or to reduce his or her course grade by one-half letter grade for each class missed following his or her sixth absence.

Meaningful class participation will help your grade. Failure to meaningfully participate will hurt your grade. When I ask you a question, make your best effort to answer it. If you need additional information or clarification, ask for it. If you have something to add to the class discussion, raise your hand and I will try to call on you.
Calculating Your Course Grade

Current BSL policy permits me (1) to consider work graded nonanonymously and your classroom performance (as discussed above), as well as your performance on the anonymously-graded final exam; and (2) to combine anonymous and nonanonymous grade components after obtaining exam number identities from the registrar, provided that I disclose that fact in writing before the end of the first week of the semester.

I plan to calculate your course grade in the following manner:

<table>
<thead>
<tr>
<th>Component</th>
<th>Weight</th>
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<tbody>
<tr>
<td>Final Exam</td>
<td>70-100%</td>
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<tr>
<td>Written Work</td>
<td>0-30%</td>
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<tr>
<td>Class Participation</td>
<td>-5% to +5%</td>
</tr>
</tbody>
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I hereby disclose to you that, as I have done for the entirety of my legal teaching career, I will grade all optional written assignment(s) nonanonymously, and will calculate final course grades, including class participation and optional written assignment grades, after the registrar reveals whose name goes with each exam I.D. number. Never fear. I take grades too seriously and value my reputation as a fair grader too much to play favorites.

Accommodating Disabilities

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the Disability Resource Center (DRC). The DRC coordinates all academic accommodations for students with documented disabilities. The DRC reviews and houses student disability documentation and provides students with an official Academic Accommodation Plan to present to their professors if the DRC concludes that an accommodation is warranted. UNLV strongly discourages faculty from accommodating students without an Academic Accommodation Plan.

The DRC is located in the Student Services Complex (SSC-A), Room 143. Its contact numbers are: Tel: (702) 895-0866; TTY: (702) 895-0652; Fax: (702) 895-0651. For additional information, visit: [http://studentlife.unlv.edu/disability/](http://studentlife.unlv.edu/disability/).