

**Cashier's Checks:
Lost, Stolen or Destroyed
What do I do when . . . ?**

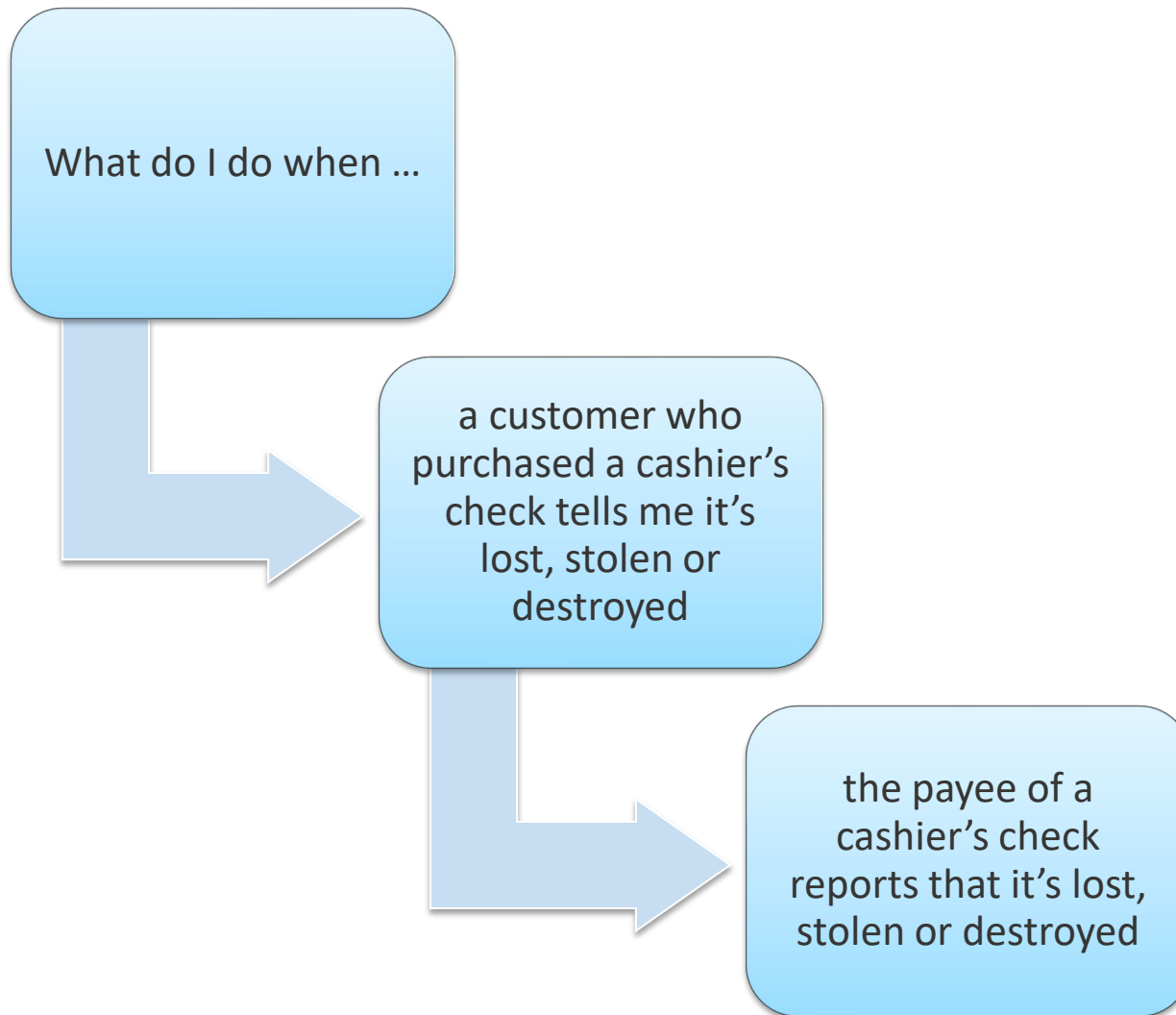
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This is a job for the *Uniform Commercial Code* . . .



First, some essential terms

UCC 3-103

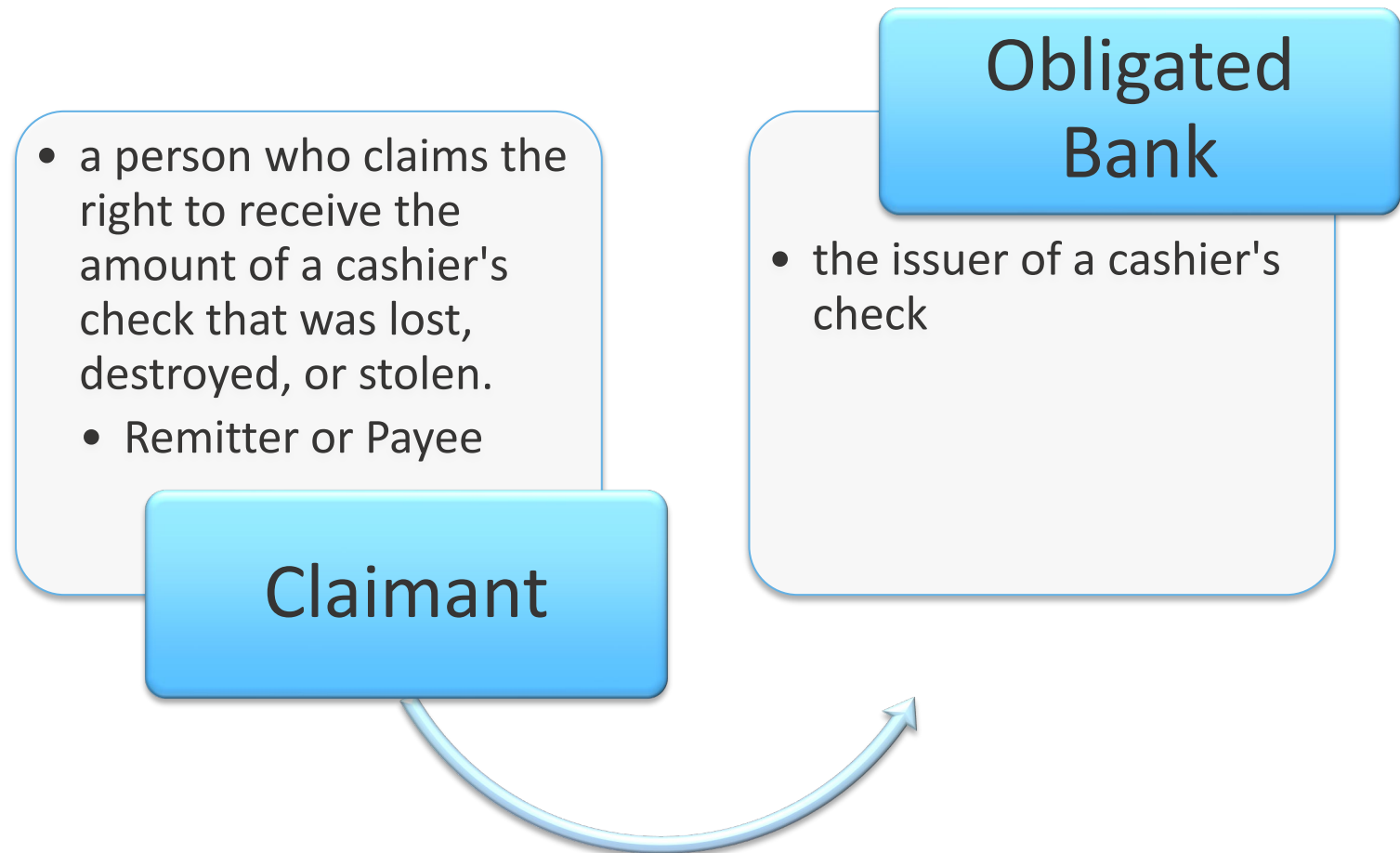
- Drawee: means a person ordered in a draft to make a payment
 - The bank that a check is drawn on; the Paying Bank
- Drawer: means a person who signs or is identified in a draft as a person ordering payment
 - The maker or issuer of a check
- Declaration of loss: means a statement made under penalty of perjury by the payee or remitter that they lost possession of the check

What's a Person?

- a Party to a check
 - **Entity**, not necessarily flesh and blood



UCC 3-312: The Players



Cashier's Checks: What ARE they?

A cashier's check means a draft with respect to which the **drawer and the drawee are the same bank.**

UCC 3-104(g)

signed by an officer or employee of the bank on behalf of the bank as drawer

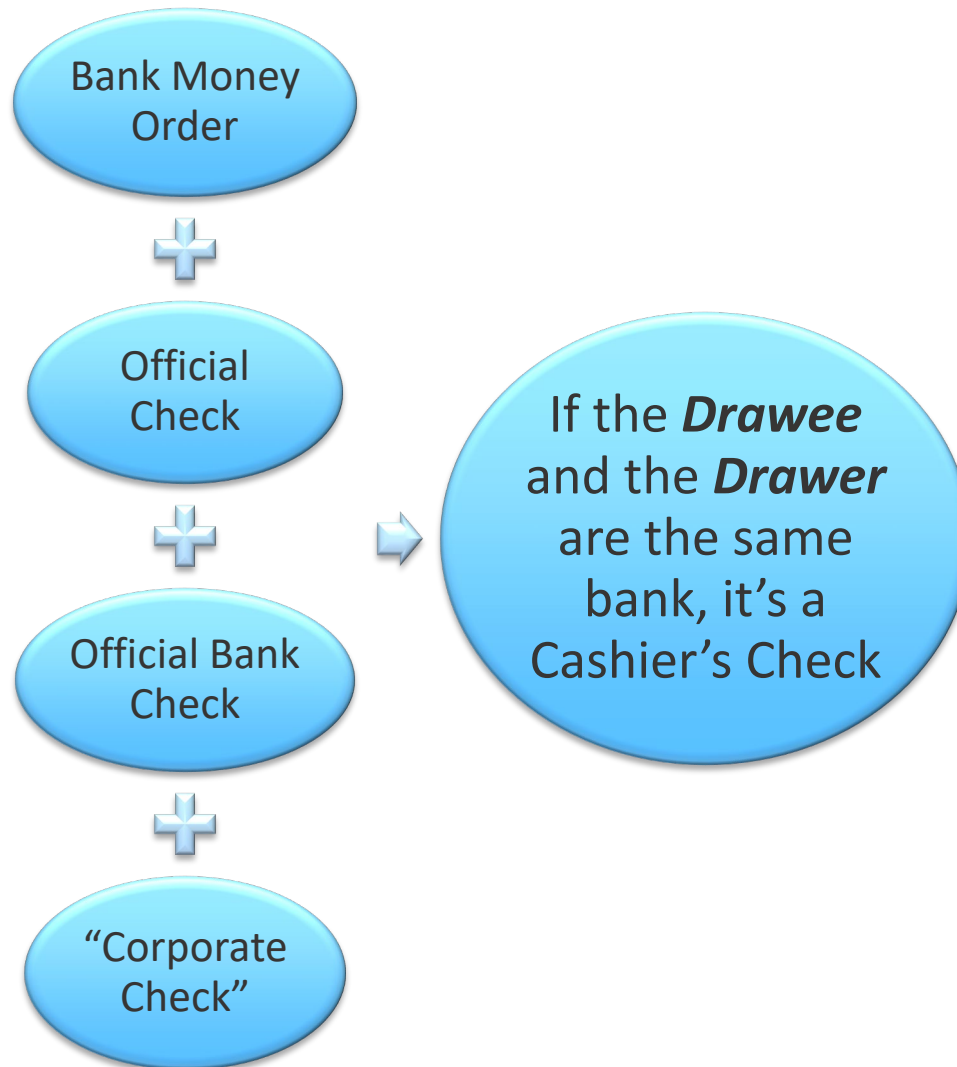
A check that is drawn on a bank,
Reg CC 229.2(i)

A direct obligation of the bank; and

Provided to a customer of the bank or acquired from the bank for remittance purposes.



A check by any other name . . .



Boil it down for me . . .

A cashier's check is a check ***drawn on the bank that is also the issuer of the check.***

- Drawer and Drawee are the same bank

The issuer of a cashier's check is obliged to pay the instrument according to its terms at the time it was issued UCC3-412

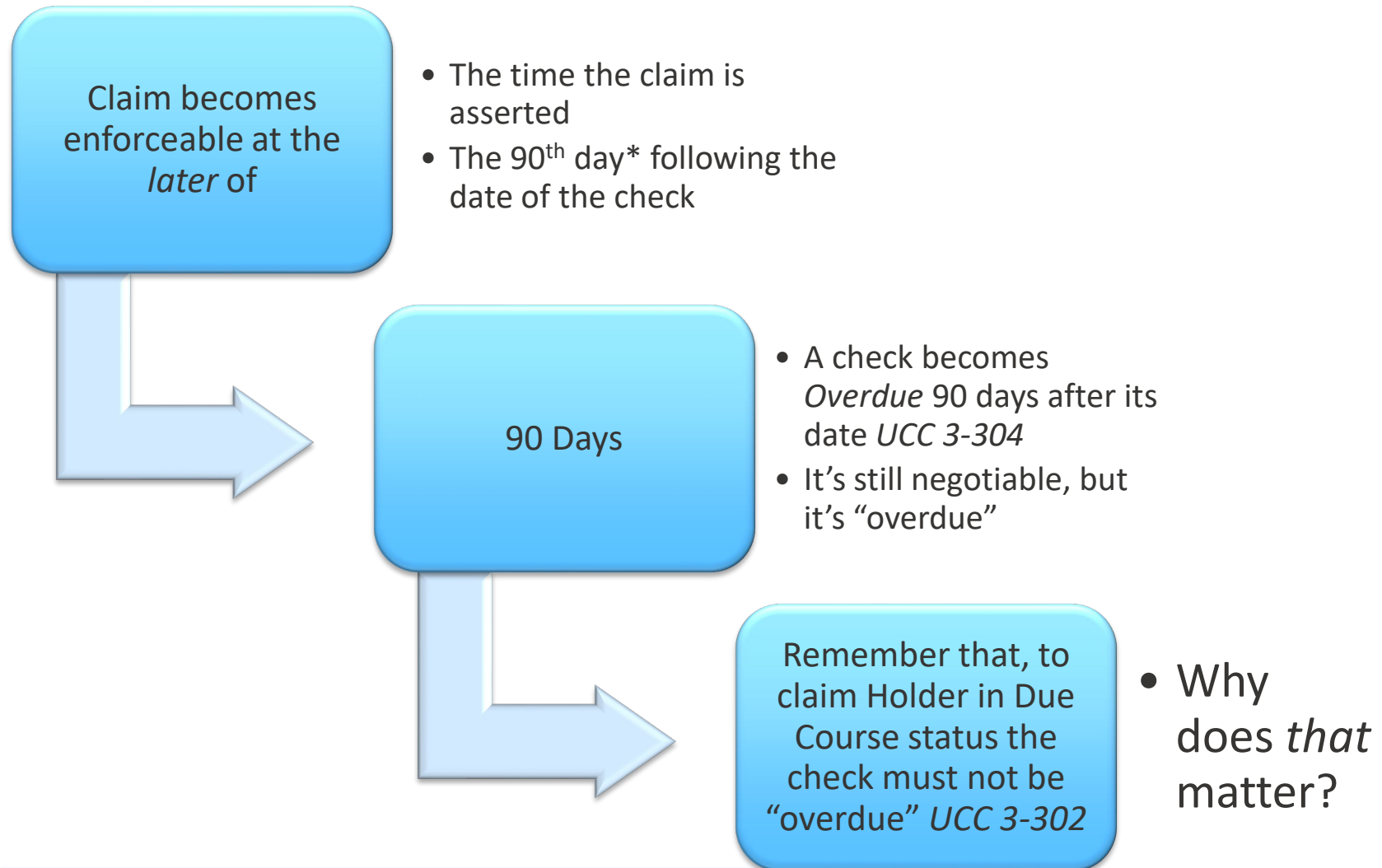
- No stop payments for buyer's (remitter's) regret

If the issuer of a cashier's check refuses to pay, the person asserting the right to enforce the item (e.g. *BOFD*) is entitled to compensation UCC3-411

- Generally entitled to expenses, loss of interest and may recover consequential damages



So what if it gets lost/stolen/put through the laundry? UCC provides a process to replace . . .



*Verify timing in YOUR state's version of UCC



Holder in Due Course (HIDC) *UCC 3-302*

Holder in Due Course means the holder of an instrument taken

- For value
- In good faith
- *Without notice the instrument is overdue*
- Without evidence of forgery or alteration
- Without notice of any claim to the instrument

HIDC may make a claim against the *drawer* of a check returned unpaid if all conditions are met

- Issuing Bank (drawer) may be subject to an HIDC claim if it replaces cashier's check before 90 days *and* the original check is presented and returned unpaid

If an *overdue* instrument is accepted, the acceptor can make no claim of holder in due course status (*3-302*)

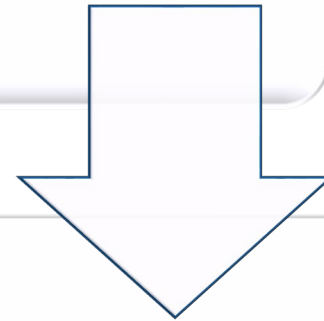
- Recall the Declaration of Loss timing



To Make a Claim *UCC 3-312*

A claimant may assert a claim for the amount of a check by a communication to the obligated bank

- Describe the check with reasonable certainty, and
- Request payment of amount of the check if:
 - (i) Claimant is . . . the remitter or payee of a cashier's check




Claim must be made within UCC statute of limitations

- Within 3 years




Remember the Date? *UCC 3-312*

(1) The claim becomes enforceable **at the later of** (i) the time the claim is asserted, or (ii) the 90th day following the date of the cashier's check*



(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the reported lost/stolen check, if it is presented. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

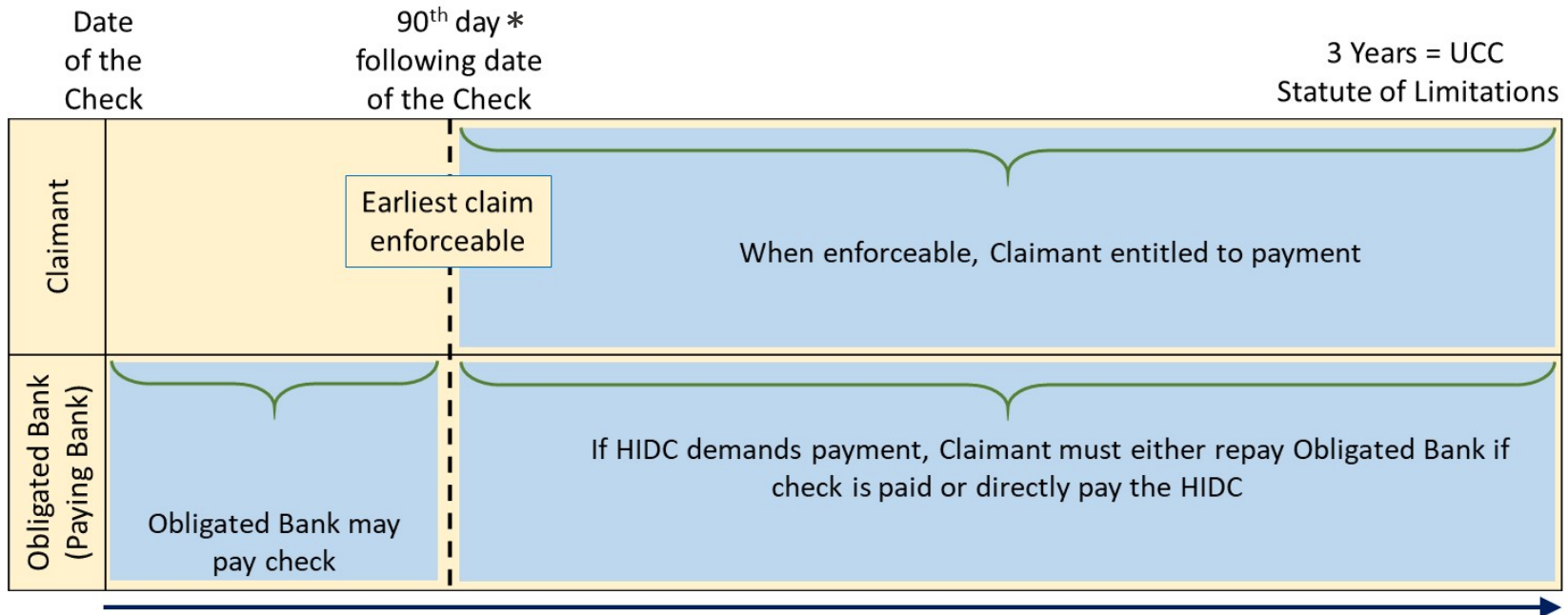


(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

*Verify timing in YOUR state's version of UCC 3-312

Declaration of Loss – Timeline

- Claim enforceable at the **later** of:
 - Time claim is asserted; or 90th* day following date of check
 - Earliest date “lost/stolen” claim is enforceable = 90th* day after issue date
- Claim has no legal effect until enforceable
 - Until enforceable, Obligated Bank **may** pay the check



Source: ePayResources

*Verify timing in YOUR state's version of UCC 3-312

3 Years after
demand for
payment

In the meantime . . .

What does the remitter or payee do?

They must wait.



Or, the obligated bank *may* replace the check before the 90th day, *but it's risky*

If the original check is presented for payment, the bank is **obligated to pay it**



Must recover from Claimant or take a loss



But the customer has the wad of lint that used to be the check

Obligated bank should assess the risk of the original check being presented if replaced before the 90th day



Obligated Bank payment to Claimant

When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Payment to the claimant *discharges all liability of the obligated bank* with respect to the check.



But...



What if the lost/stolen check actually *is* presented? 3-312

If the obligated bank pays the amount of a check to a claimant and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to



(i) refund the payment to the obligated bank if the check is paid, or



(ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

How could *that* happen?



Check was accepted at check casher on day 89, obligated bank replaces on day 91, original presented on day 92



So if the lost/stolen check actually *is* presented . . . 3-312

(2) *Before* the claim became enforceable, obligated bank may pay

If the Payee did *not* receive value, the Bank of First Deposit may have breached their UCC warranty that they are “entitled to enforce”
3-417, 4-208

(3) *After* the claim became enforceable, the obligated bank is not obliged to pay the check



Let's talk Teller's Check: UCC 3-104(h)

UCC 3-312 addresses lost, destroyed or stolen cashier's check, *teller's check*, or *certified check*

What's a Teller's Check??

- "Teller's check" means a draft drawn **by** a bank (i) on another bank, or (ii) payable at or through a bank.
 - One bank has an account at another bank; checks written by the drawer are called Teller's Checks

The same conditions for replacing a lost/destroyed/stolen cashier's check applies for a lost/destroyed/stolen Teller's Check

- Claimant is either the drawer or payee



Let's talk Certified Check: UCC 3-409(d)

What is a certified check?

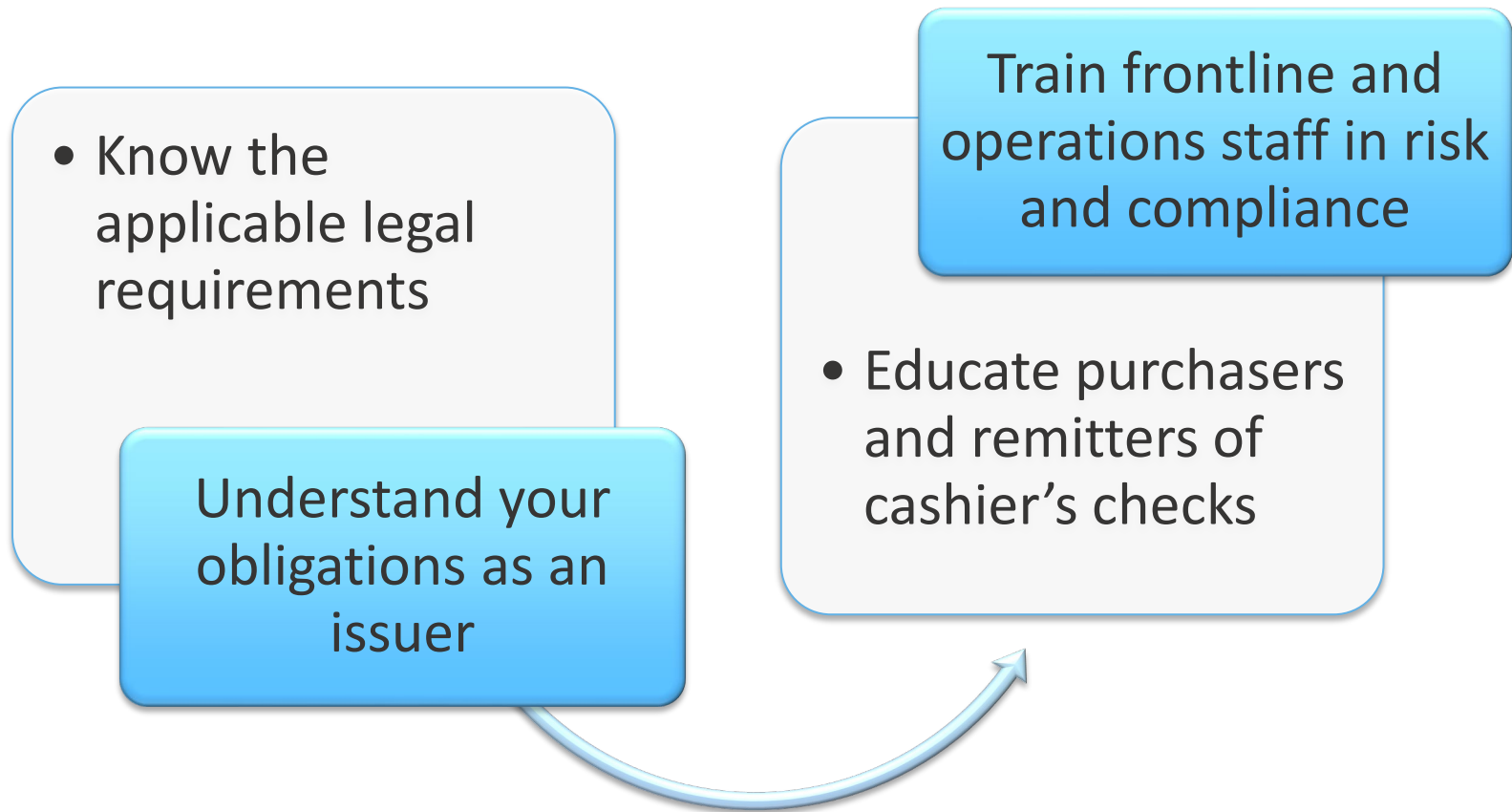
- "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.
- Drawee bank guarantees payment of a certified check
 - Funds removed from drawer's account, check is marked or indicated as "certified"
 - Not particularly common today

The same conditions for replacing a lost/destroyed/stolen cashier's check applies for a lost/destroyed/stolen certified check

- Claimant is either the *drawer* of the check, or the *payee*



Know your risk when issuing Cashier's Checks



A Word About Stale Dated and Future Dated Checks

UCC 4-404. Bank Not Obligated to Pay Check More Than Six Months Old

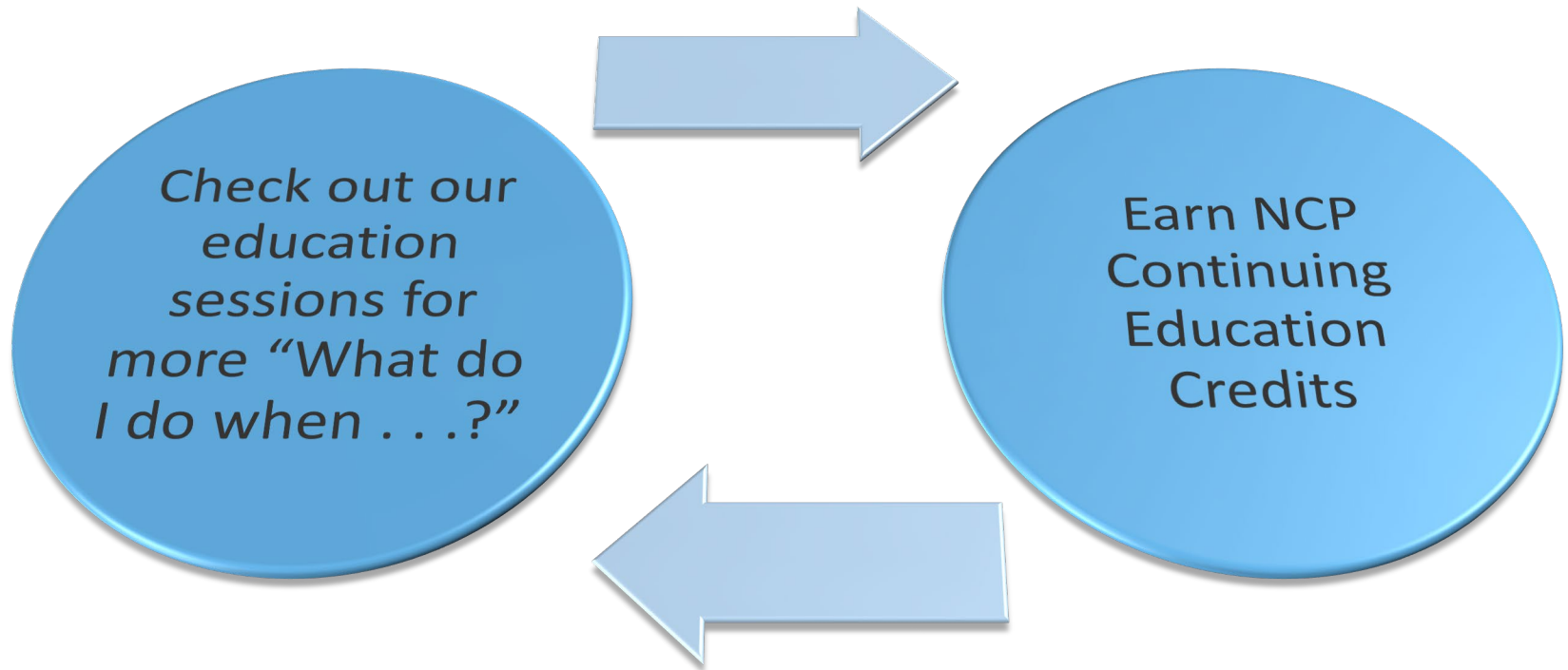
- A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

UCC 4-401. When Bank May Charge Customer's Account

- (c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty.



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