CREDIT CARDS

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Although there are many of them in use, there are still mysteries in the legal relationships arising out of the use of a small piece of plastic, 85mm. by 54mm. in size and embossed with someone's name and reference number. These cards are usually known by the name of the issuing company, such as the American Express card or the Diner's Club card, or by a proprietary name attached to the card by the issuing company, such as the Bank Americard, Master Charge, Barclaycard (Visa), Access or Bankcard.

There is another type of plastic card, looking very similar, that is much in use in Europe but that must be distinguished from the credit card. This is the "cheque card" or "cheque guarantee card". This is for use in association with ordinary cheques, and if used in accordance with the instructions constitutes a contract guaranteeing that the cheque in respect of which it is used will be paid by the bank whether or not funds are available in the account. It eliminates the risk in taking a cheque as payment from a stranger, and also enables the holder to cash cheques at any bank participating in the scheme.

My own cheque card bears the following rubric on the back:

> The issuing Banks undertake that any cheque not exceeding £30 in any one transaction will be honoured subject to the following conditions:
>
> (a) The cheque must be signed in the presence of the payee.
>
> (b) The signature on the cheque must correspond with the specimen signature on this card.
>
> (c) The cheque must be drawn on a bank cheque form bearing the code number shown on this card.
>
> (d) The cheque must be drawn before the expiry date of this card.
>
> (e) The card number must be written on the reverse of the cheque by the payee.
>
> Also available for use at all offices of the major British and Irish banks and at banks abroad displaying the Eurocheque Symbol.

There has been no civil litigation concerning cheque cards, but a cheque card with similar wording to my own was discussed by the House of Lords in *Reg. v Charles.*[1] It was said by Lord Diplock in this case that "the use of the cheque card in connection with the transaction gives to the payee a direct contractual right against the bank itself to payment on presentment, provided that the use of the card by the drawer to bind the bank to pay the cheque was within the actual or ostensible authority conferred upon him by the bank".[2] Lord Edmund-Davies added something to the question of the creation of the direct contractual right when he said: "by producing the card so that the number thereon could be endorsed on the cheque he in effect represented, 'I am authorised by the bank to show this to you and so create a direct contractual relationship between the bank and you that they will honour this cheque'".[3]

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1. [1976] 3 W.L.R. 431. See also *R. v Kovacs* [1974] 1 W.L.R. 370.
2. [1976] 3 W.L.R. 431 at p.433.
3. [1976] 3 W.L.R. 431 at p.441.

The analysis does not appear to present much difficulty. The wording on the card — and, indeed, on literature issued by the bank to publicise the cheque card scheme — constitutes an offer to honour cheques drawn in accordance with the conditions. This is an offer to the world at large. It is accepted by conduct by the payee of the cheque when he takes the cheque preferred to him as payment in accordance with the conditions set out. The contract that thus comes into existence between the bank and the payee is of course different from the contract arising out of a normal bill of exchange between the acceptor and the holder since it is not one arising out of the cheque itself, but it would enable the payee to sue the bank for the amount of the cheque. Presumably the bank would be liable for the amount of the cheque even if the signature on the cheque were forged: the condition "The signature on the cheque must correspond with the specimen signature on this card" probably means no more than that the two signatures must look reasonably alike.

So much for the cheque card, which I have mentioned in order to dispose of shortly. My main concern in this paper is with the credit card, which is not used in association with cheques but in association with different clips of paper variously known as sales vouchers, sales drafts, charge slips, accounts, invoices and no doubt several other names. These slips of paper, which I shall call "vouchers", are not like cheques carried around by the customer or card holder, but a stock is kept by the shopkeeper who normally fills in the relevant details.

The main division between types of credit cards is between the two-party credit card and the three-party credit card. The cards I referred to in my opening paragraph are all three-party cards. The three parties are the card-issuing company who takes the initiative in setting up the credit card scheme, the customer to whom the credit card is issued, and the shopkeeper, retailer, or other supplier of goods or services, who takes the credit represented by the card in payment for goods or services supplied. In the interests of consistency I shall refer to the card-issuing company as the credit company, to the customer as the card holder, and to the supplier of goods or services as the dealer. Thus the credit company issues a card to the card holder. When the card holder wishes to buy goods from a dealer who subscribes to the scheme he presents the card. The dealer fills in a voucher (usually in triplicate) and by the use of a simple pressure machine imprints the embossed symbols on the card onto the voucher, which is signed by the card holder. One copy of the voucher is then handed to the card holder as his record of the transaction, one copy is retained by the dealer, and one copy is sent to the credit company by the dealer for payment to him.

In this three-party system (I shall call it that, though more than three parties may well be involved and "Multi-party" might be more accurate), there are two formal contracts on the credit company's standard forms. One is between the card holder and the credit company, and the other between the dealer and the credit company. Whether there is a contract between the dealer and the card holder in each individual transaction is a matter for discussion later, but if there is one it is not a formal contract. It will be noted that the credit card can be used only as a means of paying a dealer who has already joined the scheme by entering into a formal contract with the credit company (whereas a cheque can of course be used to pay anyone).

The two-party credit card is a simpler but more limited document. The dealer is the issuer of the credit card, which can be used only at his premises. There is,

therefore, no separate credit company. The card may be issued by a dealer who has only one shop so that it can be used only at that shop — usually a department store — or it may be issued by a dealer who has a chain of stores for use at any shop in the chain. In this situation the card serves essentially to identify the card holder as a person who has opened a credit account with the dealer, and it is likely that the relationship between the card holder and the dealer is exactly the same as that between any customer who has opened a credit account and the dealer or shopkeeper who grants credit without using any card or other identifying symbols. Problems may however arise in the two-party card situation peculiar to the use of the card, as for example where the card comes into the hands of a third party who uses it to obtain goods or services and to charge them to the card holder's account. This paper will not discuss the two-party credit card at length as most of the problems which arise are more conveniently discussed in relation to the three-party credit card.

The Problems that Arise

There are several problems worth discussion in relation to the use of credit cards. They involve the nature of the relationship between the credit company and the card holder, the relationship between the credit company and the dealer, and the relationship between the dealer and the card holder. Where there is some legal regulation of credit transactions of a particular type, it may of course be necessary to determine whether the card transaction falls within the scope of the legal regulation. In this paper I shall concentrate on the relationship between the credit company and the card holder.

Credit Company and Card Holder

Our starting point for the relationship between credit company and card holder must of course be the contract between them. On application for a credit card the prospective card holder will usually sign a form supplied by the credit company. Sometimes this will set out the terms of the contract in full. Sometimes it will purport to incorporate conditions to be found elsewhere. For example, an Australian application form for an American Express card says "The Applicant agrees to be bound by the terms and conditions accompanying the Card(s). . .when issued and any amendment thereto. . . Subject to the terms and conditions referred to above, the Applicant assumes liability for all charges to the account by use of the Card(s). . .or otherwise". The application form used in Australia for Bankcard does not contain any agreement to be bound by conditions, but merely contains a statement that the answers given are true and complete "and have been made to the Bank to enable it to determine whether or not to grant the application and if so the conditions on which a Bankcard will be offered to me".

If the terms are not set out on the application form — or, possibly, even if they are — the card when supplied will be accompanied by the terms and conditions subject to which it is issued. Where the credit card scheme is launched by a mass mailing of unsolicited credit cards, which has happened in many places, the cards will likewise be accompanied by a copy of the conditions. It may be stated in the conditions that use of the card will be deemed to be an acceptance of the conditions, but even if it is not the probability is that use of the card would be interpreted as an acceptance of the offer contained in the

supply of the card and if the conditions accompanied the card they might well be held to have been brought to the card holder's notice and accepted by him. It is quite common to enclose the card in a folder setting out the conditions so that the card can only be removed from the folder by opening the folder so as to expose the conditions.[4]

If the conditions bind the card holder they will certainly contain a provision imposing upon him an obligation to pay the credit company for all debts incurred by the use of the card. Even if they do not bind him, however, or even if the conditions are silent, there will certainly be such an obligation arising by implication out of his use of the card. The interesting question is as to the basis in law of the card holder's obligation to pay. The question is not entirely academic. It may be relevant to (a) the application of credit regulation and (b) the card holder's rights against the credit company or dealer, as we shall see.

There are at least three possible explanations of the card holder's liability to the credit company: the assignment theory, the direct obligation theory, and the restitutionary theory.

The Assignment Theory

The card holder buys goods from the dealer. Under the contract of sale the card holder is under an obligation to pay the price. Instead of paying cash he produces the credit card, thereby informing the dealer that the credit company will pay in his stead. He signs the voucher confirming his obligation to pay for the goods. The dealer forwards the voucher to the credit company who pays the money (sometimes deducting a discount) to the dealer. The submission of the voucher to the credit company represents an assignment to the credit company of the dealer's right to payment under the contract of sale. This is the essence of the assignment theory.

It is evident from this account that under this theory the liability of the card holder to the credit company does not rest upon his contract with the credit company. If the credit company were to sue the card holder the action would, on this theory, be an action for the price of goods sold. Only if the voucher is a negotiable instrument (there seems to be no evidence that the commercial community treats it as such) would the credit company have a better right to the price than the dealer. Consequently if there would be any defence to an action for the price brought by the dealer that defence would be valid against the credit company.

The Direct Obligation Theory

Here we find that there is not necessarily any obligation on the card holder to pay the price to the dealer. He is supplied with the goods on production of the credit card and the dealer looks to the credit company to pay the price. The credit company pays the dealer under the contract between them, and then claims the money from the card holder not as an assignee of the dealer's rights against the card holder but under the card holder's direct contractual obligation to the credit company to reimburse them any money paid to a dealer arising out of the use of his card.

4. For a discussion of "offer and acceptance" see K.M. Sharma, "Credit Cards in Australia: Some Predictable Legal Problems" (1972) 3 Lawasia 106 at pp.118-120.

The Restitutionary Theory

The direct obligation theory is based on a contractual obligation. The restitutionary theory is based on a quasi-contractual obligation: the credit company has paid the dealer the price of the goods supplied to the card holder, and the credit company thus has an action under the old common counts for money paid to the use of the card holder at his request.

The literature contains some discussion of these competing theories.[5] As far as case law is concerned, two New Zealand decisions raise the issues. In both, the question was whether the Moneylenders Act 1908 (N.Z.) applied to the credit company. In neither case was a credit card used, but the documents in question appeared to serve a similar function. Both were criminal cases.

In *Goldberg v Tait*[6] the accused carried on a business of the type known as a "cash-order" or "cash-coupon" business. In England this would be known as "check-trading".[7] He issued to customers orders or coupons addressed to dealers. The operative words of the order were: "Please supply to [customer's name]. . .goods to the value of [specified amount] and charge to our account". These orders were supplied to customers on payment of 10 per cent of the face value, the customer thereafter paying 5 per cent of the face value each week for twenty weeks, making a total payment of 110 per cent ("you pay only 2s in the £1").[8]

It will be seen that the transaction is not dissimilar to the credit card transaction. In each, the customer (card holder or order holder) is supplied with goods by the dealer. In each, the customer produces his document (credit card or order) to the dealer. In the one case the credit card is used to complete a voucher which is signed by the customer (card holder). In the other the order is signed by the customer and handed to the dealer. In each case the dealer submits the voucher or order to the credit company for payment. In each, the dealer is not concerned with the arrangements between the credit company and the customer as to payment by the customer.[9]

The Full Court held that the accused was carrying on the business of moneylending and, not having registered as required by the 1908 Act, was guilty of an offence. The defence argued that the transactions were not loans of money but sales on credit. The difficulty in this argument was, however, that manifestly the accused had not sold goods to anyone. He had paid the dealer for goods supplied to the customer. A similar transaction was described in an earlier Australian case, ***Allchurch v Popular Cash Order Co. Ltd***[10] as being in effect the

5. See in particular D.H. Maffly and A.C. McDonald, "The Tripartite Credit Card Transaction: A Legal Infant", (1960) 48 Calif. L. Rev. 459 and R.E. Brandel and C.A. Leonard, "Bank Charge Cards: New Cash or New Credit", (1971) 69 Mich. L. Rev. 1033. These articles deal with the assignment and direct obligation theories.
6. [1950] N.Z.L.R. 976.
7. See Report of the U.K. Committee on Consumer Credit (the Crowther Report), 1971 Cmnd. 4596, paras 2.1.53, 2.1.58, 2.4.1-2.4.7, 2.5.5 and 4.1.64.
8. The additional payment of 10 per cent over twenty weeks was equivalent to an annual rate of 55 per cent calculated in accordance with the Schedule to the Money-Lenders Amendment Act 1933 (N.Z.). As the accused also received a discount from dealers this rate was effectively increased to about 75 per cent. The English practice was to charge 1s. in the pound for twenty weeks, not 2s. in the pound; of this, the Crowther Committee said that the annual rate of about 25 per cent was "not unreasonable": para. 2.4.3
9. *Cf.* Crowther Report, Para. 4.1.66.
10. [1929] S.A.S.R. 212.

same as if the customer had paid the dealer with cash[11] or a cheque[12] previously handed to him by the credit company rather than a special "cash order" document.

Goldberg v Tait[13] and *Allchurch v Popular Cash Order Co. Ltd*[14] both support the direct obligation theory. Moreover, in *Goldberg v Tait* both Stanton J.[15] and Hay J.[16] expressly reject the restitutionary theory, pointing out that on that explanation the credit company would be entitled to no more than reimbursement of the amount actually paid to the dealer – deducting the discount from the price and without any interest.

In *Cash Order Purchases Ltd v Brady*[17] there was rather more substance in the argument that the cash order transaction was a sale of goods by the credit company. The customer was asked to sign a document addressed to the credit company commencing: "I agree to purchase from you goods as stocked by your Vendors" and ending: "Cash Order Purchases Ltd hereby agree to sell to you. . .such goods as shall be selected by you. . ." A separate contract with each dealer provided for the sale by the dealer to the credit company of goods selected by the credit company's customers. Nevertheless the Full Court held that the court could go behind the documents and that the true nature of the transaction was that it was a loan.

How far can these cases help us in analysing the credit card transaction? As far as is known, none of the credit card contracts is drafted on the basis of a sale to the credit company, as in *Cash Order Purchases Ltd v Brady,*[17] although that device is commonly and successfully used in hire-purchase transactions. Since the use of the credit card is not confined to sales of goods but extends to transactions such as hire of goods and supply of services the sale fiction would not be apt – indeed, in *Brady's* case the impossibility of applying the contractual forms to the use of cash orders to pay dentists was a factor in persuading the court that the contracts could not be taken at their face value.[18]

In some of the American cases, the documents have deliberately been drafted on the assignment theory and this has been accepted by the courts. If the documents represent the deal in that way it is difficult to see why, in the absence of an attempt to evade mandatory legislation, the court should not give effect to the documents. If the documents are not drafted so as to settle the theoretical basis, it is thought that the direct obligation theory most accurately represents the true nature of the transaction and that *Goldberg v Tait*[19] and *Allchurch v Popular Cash Order Co. Ltd*[20] lead to the loan of money explanation.

But there is one reason why these cases may not settle the question of moneylending completely. This is because not all credit card systems operate on an extended credit basis. Most bank credit cards – BankAmericard, Barclaycard,

11. [1929] S.A.S.R. 212 at p.216, per Sir George Murray C.J.
12. [1929] S.A.S.R. 212 at p.217, per Angus Parsons J.
13. (1950) N.Z.L.R. 976.
14. [1929] S.A.S.R. 212.
15. [1950] N.Z.L.R. 976 at p.988.
16. [1950] N.Z.L.R. 976 at p.992.
17. [1952] N.Z.L.R. 898.
18. [1952] N.Z.L.R. 898 at p.909 per O'Leary C.J. and at p.921 per North J.
19. [1950] N.Z.L.R. 976.
20. [1929] S.A.S.R. 212.

Access and Bankcard, for example – incorporate in their conditions provisions for repayment to be made within a specified period – usually 25 days – from the date of the monthly statement, or later at the option of the card holder. If payment is deferred there may be minimum payment, calculated as a percentage of the debit balance, payable each month. Interest (1½ per cent or 2 per cent per month) is charged on money not paid within the 25 days. It is thought that these credit cards fall within the reasoning of the cases discussed and are to be regarded as loan devices. A loan does not cease to be a loan because the borrower has the option of repaying early.

Some other credit cards, however, do not offer a credit facility as a matter of course. This applied to American Express cards and Diners' Club cards. In the absence of special arrangement[21] the monthly account is payable by the date shown on the monthly account. Does the loan explanation hold for such non-credit credit cards? It is submitted that it does. Credit cards are not just cards which establish one's creditworthiness, they inevitably involve a period of credit being given by the credit company. By the time a voucher is submitted by the dealer, processed by the credit company, and appears on a bill received by the card holder, some days or weeks – often over a month – will have elapsed. The card holder then has some days in which to remit the money to the credit company. During all this time he has had the benefit of the goods or services without paying for them, and in most cases the dealer will have received payment from the credit company which will not seek to wait for payment from the card holder. Thus there is clearly a period during which the credit company is likely to have "lent" him money.

The significance of establishing whether there can be said to have been a loan by the credit company to the card holder is, as demonstrated by the South Australian case and the New Zealand cases discussed above, that in those jurisdictions with moneylending legislation the credit company may find that it is subject to the requirements of registration and statutory control over contracts.

Thus in New Zealand the Moneylenders Act 1908 applies to a "moneylender", which is defined in section 2 as including "every person whose business is that of moneylending". Prima facie, therefore, it would seem that a credit company which issues credit cards is a moneylender within that Act, unless it falls within one of the exceptions. There are seven exceptions, and on the assumption that the credit company is not a licensed pawnbroker nor a building society or friendly society, whether it is governed by the Act would depend on whether it is carrying on the business of banking or insurance, a trading bank, trustee savings bank or private savings bank as defined in the relevant legislation, or bona fide carrying on "any business in the course of which and for the purposes whereof he lends money at a rate of interest. . .not exceeding ten per cent per annum" (1908 Act, s.2(d)). It appears therefore that a bank[22] issuing credit cards is not within the Act but that if credit cards are issued other than by a bank, not in the course of a business for the purposes of which the credit cards

21. A current American Express application form states: "In normal circumstances, we require that you pay your bill in full when you receive it. But there may be times when you wish to extend payments for airline tickets or a vacation. With our "Sign & Fly" and "Sign & Travel" plans you can extend your payments for up to 12 months at a favourable interest rate."

22. See *United Dominions Trust Ltd v Kirkwood* [1966] 1 All E.R. 968.

are issued, the Act will apply. A similar conclusion can be drawn from the United Kingdom legislation, where the relevant exclusion for persons carrying on other businesses does not refer to any maximum rate of interest. In the United Kingdom it is possible to obtain a certificate from the Department of Trade that the business of banking is being carried on, such a certificate being conclusive evidence for the purposes of the Moneylenders Acts 1900 to 1927.[23] In Victoria, incidentally, sections 36 to 46 of the Moneylenders Act 1958 specifically deal with "cash orders". It is thought that a credit card would not fall within the definition of "cash order" in section 36.

Under the Consumer Credit Act 1974 in the United Kingdom the Moneylenders Acts are in the process of being repealed. That Act expressly applies to credit cards issued by a person carrying on a consumer credit business: section 14. This involves a discussion of two matters: the way in which credit cards are referred to in the Act, and the question whether the card is issued by a person carrying on a consumer credit business.

The credit card is within the class of documents referred to in the Consumer Credit Act 1974 as a credit-token. A credit-token is defined in section 14(1) as —

> a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to an individual by a person carrying on a consumer credit business, who undertakes —
>
> (a) that on the production of it (whether or not some other action is also required) he will supply cash, goods and services (or any of them) on credit, or
>
> (b) that where, on the production of it to a third party (whether or not any other action is also required), the third party supplies cash, goods and services (or any of them), he will pay the third party for them (whether or not deducting any discount or commission), in return for payment to him by the individual.

The term "credit" is defined by section 9(1) as including "a cash loan, and any other form of financial accommodation", but in addition section 14(3) provides that "Without prejudice to the generality of section 9(1), the person who gives to an individual an undertaking falling within subsection (1)(b) [of section 14] shall be taken to provide him with credit drawn on whenever a third party supplies him with cash, goods or services". The essence of section 14(1)(b), which is clearly intended to apply to three-party credit cards, is the undertaking to pay the third party, but despite section 14(3) it is not clear that the issuer of a credit card necessarily gives such an undertaking to the card holder. The current conditions of use for Barclaycard, for example, which form the contract between the bank issuing the credit card and the card holder, say nothing about the bank paying the third party. That undertaking will be found in the contract between the bank and the dealer, the third party, who is more likely to be a company than an individual.

As can be seen from the opening words of section 14(1), a credit card is only within the definition if it is given to an individual, and only if it is given by a person carrying on a consumer credit business. A "consumer credit business" is defined in section 189(1) as "any business so far as it comprises or relates to the provision of credit under regulated consumer credit agreements". A regulated

23. Companies Act 1967, s.123.

consumer credit agreement is any consumer credit agreement which is not exempt agreement within section 16 (see sections 8(3) and 189(1)) and we can take it that section 16 has no application here. A consumer credit agreement is, roughly, defined by section 8 as an agreement between an individual ("the debtor") and any other person ("the creditor") by which the creditor provides the debtor with credit not exceeding £5,000. It would be easier to read sections 8 and 14 together if the credit-token did not have to be issued by a person carrying on a consumer credit business, but there is no doubt that the intention is to catch credit card agreements where the card holder is an individual. There is no exemption for banks as such.

Two further questions in the relationship between the credit company and the card holder must be mentioned. The first is one that has occasioned much discussion in the literature: how far is a card holder liable for purchases made by use of his card by other people? The second is whether the card holder's obligation to the credit company is affected by mishaps in the transaction with the dealer.

Use of Card by Others

There are two main situations to be considered where the card is used by a person other than the card holder: use authorised by the card holder, and unauthorised use.

Credit card contracts that I have seen do not contemplate that the credit card which has been issued to a card holder will be used by someone other than the card holder in person. This normally follows from the fact that the credit card carries the holder's specimen signature; moreover, there is normally express provision for the issue of supplementary cards on the card holder's account for the use of other persons such as members of his family or employees.

Nevertheless, if the card holder were to hand his card to another and purport to confer authority to use it, there seems to be little reason to doubt that any debts incurred by the user so authorised would bind the card holder. The one difficult question that might arise in these circumstances would be where the card holder authorised another to use the card up to, say, $100, and the limit was ignored. Analysis in terms of apparent or ostensible authority would not be easy, but as a matter of policy it might be just to hold the card holder fully liable in such circumstances.

What if the card is used without the card holder's authority? The issue has been much discussed[24] and perhaps I need do no more than indicate the problems.

In the absence of any express term in the contract the question arises whether the card holder owes a duty to the credit company to take reasonable care of the card,[25] whether the dealer owes a duty to the card holder and the credit company to take reasonable care to see that the card is properly used[26] and whether the credit company owes a duty to the card holder to take reasonable precautions against abuse.[27]

24.. See in particular Maffly and McDonald, "The Tripartite Credit Card Transaction: A Legal Infant", (1960) 48 Calif. L. Rev. 459 and K.M. Sharma, "Credit Cards in Australia: Some Predictable Legal Problems", (1972) 3 Lawasia 106.

25. *Wanamaker v Megary* 24 Pa.Dist. 778 (1915).

26. *Lit Bros v Haines* 121 A.131 (1923).

27. *Gulf Refining Co. v Plotnick* 24 Pa. D. & C. 147 (1935).

In practice, there always is a term in the contract. At one time the conditions purported to throw onto the card holder all the risk of improper use if the card was lost or stolen until notice of the loss was given to the credit company. As a result of pressure from consumer organisations and governments, of legislation,[28] and of a desire to make credit card use more attractive, most such conditions now impose a maximum amount on the card holder's liability before notification of loss. This is a relatively modest amount – N.Z.$100, Aus.$50, U.K.£30 – and is perhaps unlikely to lead to much more litigation. It may be therefore that the legal questions are no longer of great importance, but it appears likely that if such a term exists liability will not be affected by the fact that the card holder took reasonable care of the card, though an argument might still be raised on causation if it could be shown that the dealer or credit company had been negligent.[29]

Defects in Goods

The last question I wish to touch on is whether the credit company's rights against the card holder are affected by defects in the transaction between the card holder and the dealer. What if the goods supplied were unmerchantable and the card holder purported to reject them or to claim damages for breach of contract; what if the dealer were guilty of misrepresentation and the card holder purported to avoid the contract? Could the card holder refuse to pay the credit company, or set off a claim for damages?

Conditions of use often deal with this. Most credit card schemes incorporate a procedure for a refund voucher to be voluntarily issued by the dealer, and a typical clause reads: "Unless a refund voucher is issued and sent to the Bank then (subject to any rights vested in the card holder by statute) the account will be payable in full and no claim by a card holder against the supplier may be the subject of set off or counter-claim against the Bank". This is from a United Kingdom contract, and the reference in brackets is included having regard to the implied conditions and warranties which cannot be excluded in consumer sales and the liability for the dealer's breaches of contract which is imposed on the credit company in certain cases by the Consumer Credit Act 1974.[30] But this raises a whole new problem that I had hoped to avoid: is the transaction between the dealer and the card holder a sale of goods at all? What is the consideration for the supply of the goods? Is it a price agreed to be paid by the card holder (so that he will remain liable if the credit company fails to pay) or is it merely production of the credit card and signature of the voucher, so that the only contractual obligation to pay money to the dealer is on the part of the credit company under the contract with the dealer? It is always good to leave some questions unanswered in a talk on a relatively new subject. Perhaps this is as good a point to end as any other.

28. Such as the Consumer Credit Act 1974 (U.K.), ss. 83 and 84.
29. *Cf. Union Oil Co. v Lull* 349 P.2d 243 (1960).
30. Sale of Goods Act 1893 as amended by the Supply of Goods (Implied Terms) Act 1973, Consumer Credit Act 1974, s.75.