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Bills and Notes

Maynard Jackson

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BILLS AND NOTES

MAYNARD HOLBROOK JACKSON

BOSTON UNIVERSITY

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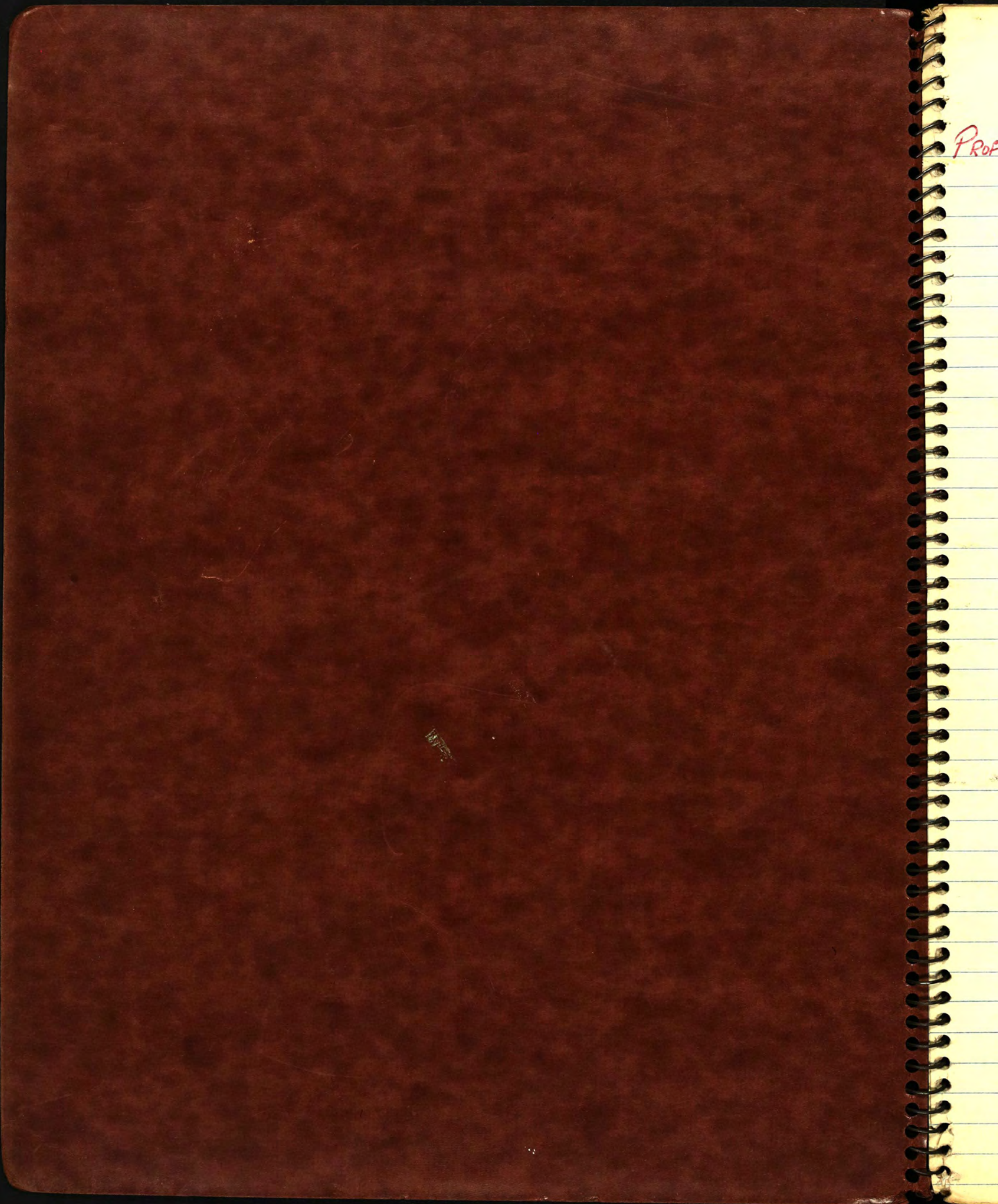

9-17-59

PROF. LIEBERMAN

Standard Assignment:
One section per class (approx. five (5) cases).

(*) [It can be said that the holding in cases is the Judge's answer to D's argument. Good to state the D's argument first.]

Should be called Commercial and Investment Papers, i.e., negotiable instruments.
Investment Papers are usually those issued by corps. e.g., stocks, bonds, ~~debent~~ debentures.
This has little connection w/ the C.L. The ct. in 12th Cent. Eng. wh. handled these matters (via a fiction of QUO MINUS) was Exchequer.

DEFINITIONS

DRAWER - the writer of the instrument.
Payee - the one to whom the money will go.
Drawee - the one to whom the instrument is directed ordering him to pay the payee.

LACK OF CONSIDERATION NO DEFENSE.

Special cts. were estab. in Eng. called Cts. of Law Merchant. In them, the defense to K of "no consid." was not recog.

In the Judge's opinion, (*) the promise need only have been given and taken seriously. However, around 1640, Cromwell abolished these cts. So, the C.L. cts. had to begin to learn this new body of law. It took about 100 years. Then, w/ the help of Lord Mansfield, these C.L. cts. finally became versed in this law. During that time, arbitration boards helped fill the gap.

(*) Bill of Exchange Act - Eng. law wh statutorily enacted the law of negot. instruments.
Now, most states use the N.I.L. Some (Mass. & Pa.) use Art. 3 of the U.C.C. (Ga.)

Kual assignee v. Holder in due course

[Although in K law the As^ee stands in the same shoes as the As^or, the party to whom the note is "As^ed" by the As^ee cannot be held to the same as the As^or. He, in negot instr. law, is a peculiar animal, and he takes free of the defenses that might or could have been interposed against the "original As^ee." Called H.I.D.C.: must be a bona fide purchaser for value w/o notice of adversity.

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Assignee — In the area of C.L. K or prop. law, the purchaser or As^ee gets only what his As^or had, and stands in the same shoes.

Holder in Due Course — But, in negot. instrument law, the taker has better defense. The taker is called a holder in due course since we are dealing w/ neg. instruments. The HIDC has extraordinary protection. i.e., A, a fraudulent holder of a N.I., can create in B, a HIDC, a stronger case than A had.

Normal contention by a Drawer against a 3rd party transferee: — Normally, the cases are between the drawer and a third person transferee. The drawer, knowing of defeat if the transferee is a HIDC, will usually try to contend that the note is not a N.I., but is a personal prop. K, i.e., a non-negot. chose, and that ∴ the third party transferee is not a HIDC.

H.I.D.C. Rule of Law — The HIDC takes free of the defenses the drawer has against the payee.

Remitter cannot sue on N.I. in his own name. Can sue D^or in Eq. for recision of K.

✱ Remitter — the one who buys the N.I. from the D^or. His name does not appear on the face of the instru.

✱ Action "on the instrument" — the P

Kerr Case held held that. Remitter got what he paid for, the paper.

7. {Acceptance is not pymt. ~~except one made on the due date.~~ If the accepted on due date, D^er is discharged. Whenever acceptance is made otherwise D^ee still liable (some cts. say secondarily). Non-acceptance on the due date is dishonor (except on a demand bill). See 150 + 151.}

Y are three things to wh the HIDC takes subject:
(1) forgery
(2) Usury
(3) Infancy + other defenses of incapacity.

is bringing the action as a N.I. and under the N.I.L.

*Types of N.I.:
(1.) N.D. – 3 parties (Bill of Ex.)
(2.) Prom. Note – e.g. "I.O.U." Y are normally only 2 parties.

Chat v. Edgar (p. 4)

This case was codified by N.I.L. 1.

Here, P^ee v. D^er because the D^ee refused pymt. Here, it was brought out that the D^er has no liability to anyone until the D^ee refuses pymt. See sec. 61 of the N.I.L. i.e., The D^er's liab. is conditioned upon the refusal of pymt. by the D^ee. — Rule of Law

See N.I.L. 79, however.

The D^ee is under no obligation to the P^ee to honor the note. (The D^er may have an action against the D^ee for slander of credit.) — Rule of Law

D^er must always be given notice of dishonor.

As between the P^ee + the D^er, all the defenses of fraud, no consid. etc. would stand (not between the D^ee + the HIDC).

So (1) there must first be a presentment by the P^ee (2) a dishonor of the note by the D^ee. — Requirements

Claxton v. Swift (p. 6)

Here an endorsee v. endorser. The same rule of sec. 61 applies

In^ee can receive only one satis. of judgment. If In^ee gets judg. against In^er but it is not satis., In^ee may sue drawer.
In^er can be sued for br/warr. on y is dishonor under 66. Same for D^er under 61.

Requirements — here: y must first be a presentment by the In^ee, and a dishonor by the D^ee. Notice must be given that y has been a dishonor of the note.

Rule of Law — In the case of a bill of exchange, foreign or inland, a demand upon the drawer(?) is not necessary to make a charge upon the indorser; but, the indorsee has his liberty to resort to either, for the money. ~~equally~~

∴ D^er & In^er are equally liable & the In^ee has an option to go against either one.

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Art. 3-413 sub. sec. 2 of the U.C.C. is equivalent to sec. 61 of N.I.L. Mass. follows Art. 3 of the U.C.C.

Weldon & Furniss v. Buck (p. 9)

Types of Bills/Ex:

(1) ~~[illegible]~~
(2) Sight Time Bill ("90 days after sight")
(3) Demand ~~Time~~ Bill
(4) Time Bill ("on 1-1-59")

This involves a time bill of exchange - not payable immediately. The converse is the demand bill - payable immediately on demand.

It was drawn in the West Indies, payable in London & suit was brought in N.Y. Thus, it is a foreign time bill. Out of forum state = foreign.

The bill was presented for acceptance, not pymt. & the bill was not accepted.

See NIL. 151 — immediate right of recourse upon dishonor.
U.C.C. 3-511 (4)

[* Acceptance - to verify that the drawee will pay on the due date. The drawee's promise to then pay is stamped on the bill]

If refusal to accept is made before due date, no dishonor. Dishonor by non-acceptance comes only one it occurs on due date (NIL 151) except w/ demand bill. So, non-acceptance of a time bill before due date does NOT const. dishonor.

Here, the drawee refused to accept. Non-acceptance is suffi.

* Issue: is the non-acceptance of a bill a dishonor thereof sufi to permit the holder to go against the drawer? Yes.

Hypo: Drawer sets maturity date on bill as 11-1-59. On 9-23-59, acceptance is requested + refused. Is the Drawer liable on 9-23 or on 11-1-59? — On 9-23-59.

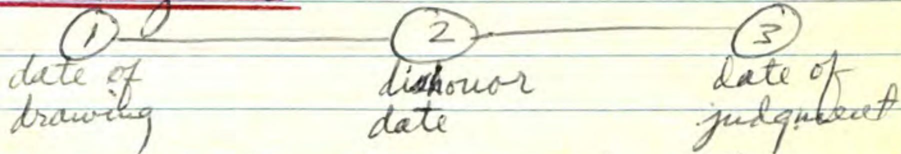
Hypo: [Drawee accepts on 9-23-59. On 11-1-59, drawee refuses pymt. (An accepted check is a certified check.) — Payee could bring an action on the instrument against the drawer as of 11-1-59.]

So, Dr. is not discharged in the case of a pre-maturity acceptance.

CARDINAL RULE OF LAW {An instrument's negotiability is deter. at the time of the making of the instrument.} If the instru. is not negot., you naturally cannot bring an action on the instrument. If an action is brought at all, it would be in K on the

ground of no consid.

⊛ Damages:



Most European monies have a history of depreciation.

Hypo: Assume that at ①, the french francs were worth for $1000.00, 1000 ff. At ②, 1000 ff. were worth $800.00. At ③, 1000 ff were worth $265. Thus, the P in a suit is usually after the earliest date, & the D is usually after the latest date. But, here the date of dishonor is binding.

Damages: 4 theories of computation: (see cbk. p. 13)
(1.) Time of drawing
(2.) ⊛ Time of dishonor (maj.)
(3.) Time of trial
(4.) Time of judgment.

Recovery of par value

[If the par value of a bill is $1000.00 (dollars) in 1949, in 1959 the P can still get $1000.00 in Amer. cts. since the specie of money is the same. Thus, the par value would be gotten by P.

Commodity Rule of Damages

⊛ The Commodity Theory – the value of the thing at the date of dishonor. (Like the dams. in K – the value of 1000 bushels of wheat at the date of breach.) This is the majority rule, + Holmes, J. applied it to Hicks v. Guiness, note on page 13.

—NIL. 109 (Waiver of Notice)
U.C.C. 3-511 (in accord)

(p. 14) Simonoff v. Granite City Nat. Bank

(But, see N.I.L. 79)

Waiver of Presentment

Ordinarily, y must be presentment to the drawee before any action can properly be brought! However, D did not ~~~~ prevail on this since the court said that D had waived the requirement of presentment, impliedly, by telling P, when P requested D to pay the bill that D would ~~pay~~ honor it later.

Illio = remitter
Sotir = P^ee
Not really dishonor here because P^ee never presented it (bill) to D^ee.

N.I.L. 109: notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, + the waiver may be express or implied.

How could Illio have brought the action since he was not le payee? He brought the action in the name of Sotir, the payee, for the beneficial use of Illio.

When suit was commenced, 7700 francs were worth $1507.22. At date of judgment, they were worth about $714.00 J/P, but dams. were as of the date of judgment. So, P appealed. Rvsd. P appealed again + judg. reversed.

Holding re Damages

The ct. ruled that presentment having been waived, the P was entitled to receive at the time of the waiver, in the currency of the U.S.A., the market value of 7,700 francs.

24 SEPT. 59

Kerr etc. v. Chartered Bank of India (p. 18)

This is an action on the K to rescind (by remitter) the draft due to the drawee's inability to honor the bill due to war (Japanese had overrun the Phillipines on drawee-bank was located).

Ct. held that since P was a remitter, it was not a Negot. Instrm. + was a K.:. P got what he paid for - the note - + since the K was executed, y could be no recission.

The ct. did not allow the recission because the P got what he paid for - the bill. P contended that he was buying a service by the bank to transmit the bill and honor it, and that due to the bank's failure so to do, ~~that~~ the draft should be rescinded. Ct. said NO.

Only a holder or payee can sue on the instrm.

A bill can be treated as a prom. note in certain situations. See § 130, NIL. (Holder has option to treat it as B/E or P.N.)

1.) D^er + D^ee same person
2.) D^ee a fictitious person
3.) D^ee lacks capacity to K

⊕ This could not have been brought on the instrument under 61 NIL because P was not a "holder" w/in the meaning of that section + sec. 191. [In Mass., under the def. of "issue", a remitter could possibly contend that he is a holder. See U.C.C.]

Recourse of a Remitter under the Code

In the Simonoff case, the P avoided the above difficulty ~~was avoided~~ by bringing the action in the name of the payee. If he had brought the

action himself as remitter, the action (on the instrument) would have been summarily dismissed).

DAMAGES — An action brought in America: damages are in U.S. dollars.

Rule of Law re Indorsee and Discharge of Drawer. — If an indorsee has the bill he holds dishonored by the drawee, and he goes against the indorser instead of the drawer, the drawer is deemed discharged.

Summary:

- A drawer is liable only after there is a prior dishonor by the drawee. The same holds for the indorser.
- Dishonor could be either non-acceptance or non-payment.
- Damages — the majority yardstick is the Commodity Rule.
- A remitter is not a "holder", thus he can not proceed on the instrument. He can proceed on the K, but even so it is normally held that the remitter got what he paid for — the bill per se. Maybe in Equity for recission if K not executed.

✳ SECTION 2: Accepted Time Drafts ✳

Quaere: What are the requisites for negotiability? See NIL §§1-6.

Rule of Law: [When the action upon the instrument, failure of consid. or lack thereof as a defense is non-existent.

Requirements for Negotiability:
- W - in writing
- U - unconditional promise
- S - sum certain in money
- S - Signed by the maker or drawer
- T - future or determinable time certain or on demand (in future)
- O - the words "to order" or to bearer (U.C.C 3-805 differs)

Under U.C.C. 3-805, the absence of the magic words ~~precludes~~ the existence of a H.I.D.C., but the note is not non-negot. due to that.

Josselyn v. Lacier (p. 26)

Promise to pay out of the funds of the corp. not uncond. See 3-105(h).

Payee v. acceptor (drawee who has accepted). D contended that this was not negot. because there was no uncond. promise since the promise was to pay from drawer's subsistence fund. (See N.I.L. 3.) This is as indefinite as promising to pay from the V.A. retirement checks that one might receive. The ct. agreed.

Thus, since this was not a N.I., it failed for lack of consideration.

28 Sept. 59

Uncond. Promise and Assignment

See NIL 5. (additional provisions not affecting negotiability) ("at maturity")

NIL 3(2) = U.C.C. 3-105

[When there is a promise or order to pay from a "specific" fund, there cannot be a negot. Instru. because there would not be an uncond. promise. Therefore, since an assignment requires a specific fund or amt., normally an instrument which is an effective assignment cannot be negotiable.

Luff v. Pope (p.28)

Sight time bill here ("30 days after sight.")

D^ee not liable unless it accepts, and D^ee not obliged to accept.

P^ee has no recourse against a D^ee on a N.I. (unless D^ee accepts). But, an As^ee would have recourse against the possessor of the assigned prop. of which As^ee is deemed the owner.

Here, P^ee v. D^ee alleging this was an Assignment. That allegation was better here for the following reasons:

(1.) An As^ee is deemed the owner of the subject matter & can demand it; a P^ee cannot demand of the D^ee the matter the D^ee holds.

(2.) An As^ee will prevail over creditors; not so if the instrument is negot.

!! CAVEAT !!

[So, often there are greater advantages to alleging other than negotiability. Watch this!

NAME CASE: Flournoy v. First Nat'l. Bank of Jeffersonville (p.31)

Holder (P^ee here!) v. acceptor

Acceptor = D^ee (buyer) here.

Trade Acceptance:
D^er = P^ee (sometimes P^ee = the D^er's bank)
D^ee = acceptor.

In a trade acceptance, the drawee is usually an indiv. businessman and the payee is usually the drawer's bank. This is a simple reverse of the normal situation.

The drawee accepted the instrument before the shipment of

First Nat. Bank v. Citizen's Bank of Campti - See Sec. 137 of N.I.L. and p. 43 of cbk. - The Dee must notify the Pee w/in 24 hours after presentment either one way or the other - either accepted or non-accepted.

goods was rec'd.

Liability of Acceptor in a Trade Acceptance

[In a trade acceptance situation, the acceptor (Dee) of a trade acceptance is liable to the payee absolutely + cannot raise any defense against Pee that he (Dee) may have had against the Der (eg., spoiled goods.)

See secs. 136, 137, 150

Lewis-Hubbard + Co. v. Morton, (p. 37): the acceptance being qualified, the drawers (D) were entitled to notice, w/in a reas. time, of the qual. acceptance, + P's failure to give them such notice discharged them from liab. See sec. 142.

* To permit himself to raise against the Pee defenses he may have against the Der, the Dee can try to show no negot. of the note and then the above rule would not be binding.

First Nat. Bank v. Power (p. 34)

Rule of Law re Conditional Acceptance (See also 136 + 137 N.I.L.)

[On a cond. acceptance of a bill, the holder can treat it as a dishonor + sue immediately upon notice to Dee on the instrument since an acceptance is supposed to be unqualified and uncond. See NIL sec. 142.

* Section 3: The Promissory Note *

P.N. - uncond. promise by one party (maker + drawee) to pay on demand or at a fixed or deter. future time a sum certain to another party named therein.

To be viewed by C.L. cts. as an ord. K. When the payee v. the drawer (maker) on the instrument the " can set up any defenses that he could set up under K since the P.N. is treated as a K anyway. The burden of proving that ∅ was consid. would be

on the P (payee). (This P.N. was treated only as a K at C.L.)

"Assignment" of a Chose in Action

At that time, since a chose in action could not be assigned, an "indorsee" could not even get the P^ee's K rights. Further, since only a negot. instru. could be indorsed w/in the meaning of that word, the As^ee would not be an indorsee any-way.

3-805 711C

30 Sept. 59

Statute of Anne, 3 and 4, chap. 9, sec. 1 (1704)

Stat. of Anne, altho' a stat., is considered to be part of the C.L.

You may bring an action on a P.N. as if it were a Bill of Exchange — even if it were non-negot. (didn't contain the words "or order" or "to bearer"). However, P.N. failed to then be negot. only because of THAT defect — lack of the words of negot. (sec. 1, sub.sec. 4 of N.I.L.) Due to that sec. of the N.I.L., any state wh adopts the N.I.L. is automatically repealing the Stat. of Anne. — See U.C.C. 3-805.

U.C.C. 3-805 = still negot., but y can be no H.I.D.C of such an instru.

Carnwright v. Gray et al. (p. 51)

This was an action on the instrument altho' it was not negot. as defined by the N.I.L.

due to the absence of the magic words. ~~& due to the~~ But, it was brought under the Stat. of Anne.

Payee v. Maker. D alleged no consid., and the question was on whom the B/P consid. or lack thereof fell. Ct. held that D had the B/P no consid. since, due to the Stat. of Anne, P did not have to show consid. i.e. It is clear that N.Y. at that time did not have a N.I.L. on its books.

Negot. of note not in question.

B/P no Consid., or failure of, falls on maker on P/N.

Ct. held that for this type of action, only the payee could maintain it. If Y had been an indorsee, the maker (D) could not have raised the defense of lack of consid. since that defense would run only between the maker & the payee, & the indorsee would take free thereof as to maker. But, as between indorsor & indorsee the defense of no consid. or failure of would run.

The execution of a P/N is the signing AND delivery thereof, both of wh must be proven when the execution is denied under oath.- Delivery is presumed prima facie from the intro. of the note into evid.

Ginn v. Dolan (P. 54)

The B/P affirm. defs. rests w/ D, & it stays throughout the action. See secs. 24 & 28. D's argument

B/P validity is on P.

Sec. 124 NIL - material alteration of a note.

is actually that sec. 24 shifts the B/P and not the B/F and that it is ∴ incorrect. The ct. refuted this.

⊛ **Kessler v. Valerio** (p. 59) **NAME CASE**

In suit by P^ee v. Maker, P^ee no longer must plead + prove consid. The D has the burden/proving failure, or lack of consideration. — Can raise fraud or failure/consid. against P^ee (after showing non-negot.) but not against HIDC.

Secs. 24 + 28 stand for the proposition that the D has the B/P re the question of consid.
In 28 NIL, "matter of defense" is construed to mean the above rule.

Citizens' Nat. Bank of Pocomoke City v. Custis (p. 63)

Sealed Ks

In states wh still recog. the seal, an action on a sealed K will negate the necessity of showing consid. since that is presumed due to the seal.

Sealed Negotiable Instruments

What about a sealed negot. instrument? Under (N.I.L.) sec. 6-4, the presence of a seal has no ~~bearing~~ affect on the validity and negot. character of an instrument. Still governed by S/L re sealed instruments.

D's standard contention in these cases:

In all of these cases, D will try to contend that P (an indorsee) could not maintain the action due to lack of consid. Therefore, since this defense would not bear on a HIDC, the D has to contend that it was really an Assignment + that P is ∴ not a HIDC, + this would be D's first contention.

→ Under the doctrine of the instant case, the only affect of the seal is to bring the note under the longer period of lims. (S/L) provided for sealed instruments.

In the preceeding sections, Ps were parties to the instm. Here, Ps are gen. holders.

SECTION 4:
NOTE AND ACCT. RECEIVABLE

1 OCT. 59

Siegel, Cooper Co. v. Chicago Trust + Sav. Bank (p. 70)

*(In these cases, the note has been sold to a subsequent party and the legal question has to do w/ the rights of holder against maker.)

*Ask yourself, "Is the undertaking of the maker phrased as a conditional promise; and, does the purchaser have such notice so that he does not take as a BFP?

Indorsee v. Maker. Maker tried to estab. def. of lack of consid. on ground that payee failed to deliver the promised advertisements. Maker, to set up failure of consid., had to first allege non-negot. on the ground that the promise was not uncond. Ct. said that the language complained of was a mere stmt. of the transaction giving rise to the instrument, ∴ not impairing the negot. ("as per terms of K" will not impair negot. per Nat. Author.)

Rule of Law: [The mere reference to another writing will not impair the negot. of the note.

Coolidge v. Ruggles (p. 67)

Promise based on an event wh may or may not happen - non-negot. See sec. 4 (e.g., "pay... after my death.") Uncertainty of time of event does not render negot. instm. non-negot.

The words "pay to the bearer" made this note susceptible to be payed to anyone carrying the note, and mere delivery of the note is suffi w/o indorsement in this case.

Ivory v. Lamoreaux (p. 74)

Indorsee v. Maker. D asserts failure of consid.; note not negot. on ground that promise was not uncond. ("This note is collateral to stock subscription number ... of even date herewith.") I/D/A. - How does this differ

from Siegel Case? = The language here did not confine itself to a recounting of the transaction, but referred to the actual cond.

Waterhouse v. Chominard (p. 78)

Min. view under N.I.L.

Indorsee v. Maker. There is here a prematurity discount clause. D was trying to show non-negot. and an assignment. D points to the Pre-*Maturity Discount Clause as making the note non-negot. for lack of a sum certain. Judge decided that the note failed for negot. However, this case did & does not represent the wt. author. + the better view. The better view is that the M.D.C. does not destroy the negot. of the note in that the sum is not uncertain. e.g., 10% off if paid w/in 10 days.

The U.C.C. allows this situation. §3-106. N.I.L. position? Probably in accord w/ U.C.C.

Better view and wt./author. - U.C.C. in accord (3-106)

Attorney's Fees

An inclusion of atty's. fees will not impair the negot. of the instrument as it is implied that they will be reas. atty's. fees.

Real Estate Taxes

(If found in collateral agreement + coll. agree. not incorp. into N.I., negot. not hurt.)

However, real estate taxes vary + may not be reas. and the inclusion of that will impair the negot.

Acceleration Clause will not hurt

negot.

When negotiability depends on citus of option:

"... date due 10-1-60, w/ power in X (payee) to extend time for pymt." - Negot. unimpaired since the power rested in the P^ee, not the maker.

"... $1000 or 100 shares of stock in X corp." - Called a convertible note. Is this an instrument "payable in money" (sec. 1-N.I.L.)? Yes. And, the option rests in the holder + ∴ does not impair the negot. If the option rested in the maker, the note would be non-negot. under the N.I.L.

5 Oct. 59

* Section 5: Bank Notes and Money *

NAME CASE

Miller v. Race (p. 87)

This was an action of Trover, thus explaining the defense of no title. The note was deemed to have been stolen from the P^ee.

P (BFP) v. Maker. Note stolen from mail by seller to P while note was en route to P^ee. When P^ee found out it was stolen, P^ee instructed maker - bank (D) to stop pymt. D alleged that P did not have title.

Issue: Whether a BFP who acquires a bearer-note from a thief gets

A thief has legal title to a negot. instru. payable to bearer or indorsed in blank.
The B.F.P. prevails because he cuts off all outstanding equities.

Due to the nature of the note, it was treated as cash. So in the case of stolen money, the T.O. cannot recover it after it has been paid away fairly + honestly upon a valuable + Bona Fide consid. in the usual course of biz.

good title?? = The ct. said ~~since~~ even tho' a thief cannot divest another of his title at C.L. + ~~since~~ even tho' paymt. had been stopped, J/P.

3-10

Title to a bearer-note can be passed by delivery alone; title to an order-note requires indorsement + delivery to pass title.

Thompson v. Sloan et al. (p. 94)

To be negot., must be payable in money. Canada money = things, not money.

This was payable in Canada money.

Incitti v. Ferrante (p. 99)

This was payable in Italian lire.

The bearer of a bill of exchange, made payable to A or bearer, has an independent right/action, i.e. may sue in his own name. Grant v. Vaughn (p. 91)

In Sloan case, ct. said that Canada money was not of current specie and was ~~thereof~~ ~~so~~ therefore destructive of the negot. of the note. The note was different here from the note in the Ferrante case in two respects: in Ferrante, the note was negot. since lire was of current specie and could be paid also in $$ since there was a rate of exchange and was therefore negot. In Sloan case, the note was payable only in Canada money since it was not just drawn in the foreign currency, rather was only payable in foreign currency.

Ferrante Case v. Sloan Case

If payable in a commodity, non-negot. If payable in money, negot.

3-107, sub. 2

The Ferrante note was drawn in foreign currency, & could ∴ be paid in another specie of currency.

CODE

Today in Mass., the above distinction no longer exists. See Art. 3-107, sub. sec. 2.

Even tho' a note made out in French francs today could be questioned re it's negot. on the ground of no sum certain since the franc's value fluxuates, this argument is not accepted.

Nortz v. United States (p. 104)

P had gold certificates. The value of gold jumped & P sued for the additional $64,000 in addition to the orig. value of the gold certificates.

How specific must be the sum? = The ct. said that the U.S. could at any time declare the existing currency no good & issue new ". However, the notes were declared negotiable.

7 Oct. 59

Section 6: Checks - Absolute or Cond. Pymt.

Quaere: Does the giving of a negot. instrument discharge the underlying obligation absolutely or cond. upon satis.? =

Ward v. Evans (p. 108) NAME CASE

D's argument was that he had paid and was ∴ discharged. D (debtor) said that by giving P's $ the third party bearer note he had paid, and the giving of it was suffi. This was an action of indebitatus assumpsit. This was not an action on the instrument because P. was not a party to the instrument. J.P.: * ou y is a precedent debt, as here, the mere taking of the note is not absolute pymt. * If the debt is a concurrent one, the presumption is that the note was taken in absolute pymt.

Note: the only method of dishonor of a check is by refusal of pymt. because a ✓ is a demand bill of exchange.

Creates rebuttable presump. of absolute pymt.

The rule in Ward v. Evans applies only to a third party bearer note & ou y is a precedent debt.

In a bearer note, y is no indorsement to the bearer. However, if this were an order note w/ indorsement, precedent or concurrent debt does not matter since it is obvious that in

Order Paper = cond. pymt.

Once acceptance is made, y is liability indefinitely on acceptor.

An Ind.ee only warrs. under 66 to subsequent Ind.ees.

all cases it is cond. pymt. in that the indorser engages under NIL 66 that he will pay only upon failure of the Dee to honor the instrument.

If a third party bearer note qualifies as legal tender, pymt. therewith is absolute, e.g., money.

Morrison v. McCarthey (p. 118)

*Bill/Ex - smacks of a time bill.

*Check - demand bill of ex.

Endorsee (P) v. Drawer (D). D raises the defense that he (D) was discharged due to unreas. delay in presenting the check for pymt. T/P: D failed to show that he suffered a loss, &, in fact, P showed that D suffered no loss (D had drawn his money out before the bank folded).

Unreas. delay of presentment to Dee of P/Note will be dis-charge Dee only pro tanto. N.I.L. 186 (U.C.C. 3-502 accord).

See also U.C.C. 3-503(2) re reas. time for present-ment of a ✓ (uncertified).

Suppose this action had been on a time bill: the correct date stipulated on the note. Late presentment will operate to discharge the Der & all of the indorsers. * Sec. 71 NIL.

*Sec. 70 - refers to a note. The maker is the one primarily liable.

Gordon v. Levine

One day is a reas. time.

The only real risk that is run is that the bank will fail.

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(*See Britton, Bills + Notes, sec. 201)

SECTION 7, CERTIFIED CHECKS

Willets v. The Phoenix Bank (p. 133)

As against the bank, a holder of a certified check is like a creditor of the bank. Operates as As^mt of funds. N.I.L. 189

*S/L does not begin until a demand is made on the bank.

Certified Check v. Cashier's Check

C.C. does not mean the same as a cashier's check. Cert. means accepted. The bank will check the acct. of the D^er and if the amt. of the ✓ is ✓, the ✓ will be cert. *A cashier's check – the bank will be the drawer and will sometimes be the drawee, too. This would make it a two-party instru. + the bank would be primarily liable. So, to avoid that, the bank (D^er) will often draw it on another bank. A Cert. check is the D^er's ✓ + pymt. can be stopped. A cash. ✓ is the bank's check and the seller in a given transaction cannot stop pymt.

UCC 3-411 (1) = cert. is acceptance.
N.I.L. 187 = cert. equivalent to acceptance.

1st Nat. Bank of Jersey City v. Leach (p. 137)

Action on the instru. against the D^er. P had check cert at drawee bank + later that day, the D^er bank failed.

D alleged that he was discharged by P's cert. of the ✓.

{Acceptance on the due date – discharge of D^er
" Before " " " – D^er still liable
Certification – discharge of D^er

Note: The acceptance of a time draft, before due, does not operate as a pymt as respects the D^er. Its only effect is to make the acceptor the primary party to pay the draft.

See N.I.L. 188 and U.C.C. 3-411 (1) = In accord.

i.e., D could allege that P was paid: by requesting cert. on the due date, it could be implied that since he did not request D's money, he preferred to substitute the bank as his debtor rather than the D (D^er). So, per NIL 188: "On the holder of a ✓ procures it to be accepted or cert. the D^er + all indorsers are discharged from liab. thereon." – This act by holder implies lack of faith in the D^er's credit and financial standing. (Born v. 1st Nat. Bank of Indianapolis) This all applies to a time bill.

Wachtel v. Rosen (p.143)

Cert. differs in effect from mere acceptance of bills other than checks in that it is not an added obligation but a substituted obligation. – The refusal by a D^ee bank to cert. a ✓ at the request of the holder does not amt. to dishonor of the instru. so que the holder may sue the D^er as if the ✓ had been presented for pymt. + pymt had been refused.

A bank is under no duty to certify a ✓. Now, under Weldon + Furness v. Buck, the D^ee's refusal to either accept or pay amts. to a dishonor. ∴, Since could we say that a refusal to certify is a dishonor ?? = No. The rule in Weldon case applies to TIME BILLS and a ✓ is a demand bill.

When a ✓ is cert., the $ is actually segregated from the acct of the D^er.

Seager v. Dauphinee (p.146)

P^ee v. D^er on a cert. ✓. D^er gave ✓ to P^ee for land sold by P^ee to D^er. Cert. ✓ was given to P^ee's Atty. who sent it right on to P^ee (P.), P^ee

waited 5 days before presenting it to the bank. Bank (D^{ee}) dishonored.

Rules of Law

[On an ord. ✓, dilatory presentment gives D^{er} only pro tanto discharge under NIL 186. But if ✓ is a cert. ✓, dilatory presentment gives D^{er} complete discharge.

If bank fails, ✓ will still be returned 10% of the D^{er}'s acct. to the D^{er}. So the discharge here would be to the extent of 90%. Under the U.C.C., it is provided that for the drawer to be discharged on a reg. ✓ when a bank fails, the D^{er} must first assign to the P^{ee} the 10% dividend, & the D^{er} is excused to the extent of the 90%.

Whenever the holder has a check cert., the D^{er} is discharged.

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Mass. G.L. Anno. Vols 13, 14 & 15 - U.C.C. See vol. 14 for comments by Prof. Liberman

* Sec. 10 - Bonds and Debentures *

* Bond - evid. of debt owing from an obligor to an obligee, wh is secured.
* Debenture - a note wh is unsecured.

A bond is secured; debent. = un-

"public stmt. of intellectual bankruptcy"
Under U.C.C. 8-102(1)(d), a "security" is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

Security — secured (usually secured in England). When an instrument is secured, it is prop. against wh proceedings can be taken in case of default and it must be stated in the bond that it is security + what it is. Very much like a conveyance + mtge. Just because the word "Bond" appears does not mean that it is secured. The security must be stated.

Mercer County v. Hacket (p.205)

Issuer sued by holder of the instrm.
BFP v. Issuer: J/P/A. Bonds payable to bearer are treated as N.I. Same for coupons attached thereto (if payable to bearer).
~~liab. of a D^{er}~~

At. C.L., for a bond to be a bond, it had to be sealed and payable to a certain person, not just to bearer. Today, this would be ridiculous because a bond will be negot. if it satis. the requirements of the N.I.L. ← [illegible] re negot.

Crouch v. Credit Foncier of Eng., Ltd. (p.209)

Issue: whether this instrm. meets the requirements of negotiability, or is all wh is: subj. to the defenses that run?
Held: non-negot. (this case was later overruled.)

A very important case even tho' it was overruled.

Action on debenture by holder (other than P^{ee}) against the issuer. The debenture had been stolen from P^{ee}. P^{ee} notified ~~issuer~~ issuer and requested Issuer to stop pymt. on them + promised to ~~[illegible]~~ indemnify the Issuer (D). So, D raised defense that the ~~[illegible]~~ P^{ee} had been paid,

Debenture not negot. here. Not so today: deben. is negot. if elements of negot appear.
J/ issuer.

and that this was not a negot. instru. but a K, & that that defense of pymt. wh could have been raised against the Pee can be raised against the holder. — Ct. said que all of the technical requirements for negot were there, it was not negot. Because it was a debenture wh was a new instru. and had no Law Merchant history. Thus, since there was no custom built up around this type of instru., it was not considered negot.

Further, you can't K out of the rule that an Asee stands in the shoes of the Asor, and by including the words "or bearer", there was an attempt to do so. Therefore, the K was not valid on that point.

In Goodwin v. Roberts, note on p. 211, the same facts gave rise to a finding of negot. It was distinguished from Crouch Case by saying that D lost because he could not prove recent usage and that Blackburn, J. had not meant to imply that only ancient custom would qualify the negot. of the note. Later, Crouch was over-

Under art 8 of Code, they are negot. instrus.

ruled.

Improvement Bonds

Still negot. under U.C.C.
Not. negot. in N.I.L. (3-105)
To cure defect, make it payable out of gen. fund

In Improvement Bonds, the city will repay the money to the purchaser by assessing the ones who will benefit from the improvement (i.e., the residents of Beacon St. when it's widened). However, this violates negot.: no ~~sum certain~~ uncond. promise since y was a special fund out of wh it is to be paid. NIL 3

Manker v. Amer. Sav. Bank & Trust Co. (p. 217)

A promise to pay out of a particular fund is not an uncond. promise to pay + an instru ~~[illegible]~~ containing same is a mere chose in Xn; + in the hands of a purchaser for value w/o not., subj. to all the defenses to wh they are subj. in the hands of the contr. But, an uncqual. promise or order to pay is uncond. w/in meaning of N.I.L. though coupled w/ an INDICATION of a particular fund out of wh reimbursement is to be made, or a particular account to be debited w/ the amt.

Manker wants to show that the note is not negot. because the theft would then not deprive him of his title since it would then be a K. Manker alleges y was a cond. promise since it was to be paid out of a certain fund.

SOLUTION: "This is payable out of maker's general assets" would avoid the above if inserted in the instrument.

* An "association" is not a recognized legal entity. But see Hibbs v. Brown, note on p. 220

hypo: Sec. L of 2nd year class agrees to issue bonds as an unincorp. assoc. — The question would be raised re whether the bonds were negot.: was y an uncond. promise to pay (i.e., ability to go against members if assoc. defaults), or whether y was a promise to pay

For the purposes of negot., an association is a legal entity. See Hibbs v. Brown, note on p.220.

from a certain fund. If the latter, no negot. However, an Assoc. being a non legal entity, recourse against individuals could be had.

[If a note provides for an option the pymt (eg, $50,000 or 1000 shares of X Corp.) and the power to exer. that option rests in the issuer, the instru. is void for lack of a sum certain. If, however, the holder has the option-valid.

Still valid under U.C.C. art.8 ← Not valid under the N.I.L.

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... Manhattan Co. v. Morgan (p.221)

(Cardozo, J.)

Belgium agreed to sell bonds to House of Morgan (D). Latter gave $ but the bonds were not ready. So, certificates entitling the holder to bonds (not money) were given to Morgan. D issued the certs. + they were stolen + bought by P from the thief. D alleged that P got no title and was ∴ an assignee standing in the same shoes as the thief.

Ct. held that on y is a conflict between the law merchant and statute, the latter being specific will prevail. Thus, J/D: title to the certs. stolen from

the owner was not divested by the later purchase for value w/o notice.

[Today, under the N.I.L., the construction is that in the absence of custom, the statute must be strictly followed.

(Secured Creditor Investment Paper)
Not negot. under N.I.L.
Negot. under Code, Art. 8

Under N.I.L., would not be negot. because payable of a particular fund.

*Equipment Trust Cert. — arose on a mtge. was held on all of X Co's prop. and X Co. wants to buy new stock. The mtge has provision: any after-acquired prop. will be included as security for the mtge. So, in order to get a loan to purchase the new equipment, y is a need for security, and Loan Co. will refuse the loan due to lack of security. So, X Co. will form a subsidiary co., X-1 Co., and will sell the Equip. Trust Certs. to a bank wh will be secured by speculative profits derived from use of the new equip. The Bank will normally get y money back as soon as possible by selling the certs. to John Q. Public, and the latter will get the quarterly pymts from X-1 Co. — These certs. are not negotiable! — unless, a State (e.g., N.Y.) passes a statute making them negot.

Presentment is not necessary to charge the maker of a P/N.

U.C.C. [Under the Code, Cert. 8, the requirements of the NIL re negot. are eliminated. So any state w/ UCC will automatically make Equip. Trust Certs. negot. instruments.

Two classes of Paper under the Code. [The Code divides paper into 2 classes, one being commercial paper (checks, bills + notes + other short term paper), and the other being Investment Paper.

* Sec. 11. Collateral Notes & CERTIFICATES *

Quaere: What about a "Confession of Judgment"? Does it destroy negot.? "Reas. atty fees" does not violate the sum certainty requisite. What about time certainty?? Under sec. 5(2) NIL "The negot. character of an instrument otherwise negot. is NOT affected by a provision which ... authorizes a conf. judg. if the instrument be not paid AT maturity."

Confession of Judgment (time certainty in issue).

Re a 60 day note, wh author. conf./judg., negot. should NOT be affected due to lack of specified time because it could have been confessed before the maturity date, because sec. 4(2) of the NIL provides ...."On OR BEFORE a fixed or determinable future time..."

Difference of opinion but Code in accord. Even If the holder can accelerate at his whim or caprice, it is negot. under the Code 1-208. ("Good faith" required under Code.)

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Chi. Ry. Equip. Co. v. Merchant's Bank (p. 236)

T.R. Clause does not destroy negot. under clause

Deals w/ title reservation clause and acceleration clause. * Why would the T.R. clause conceivably impair negot.? Because it could be argued that there was no uncond. promise as a result. [However, it was held to be a mere stmt. of transaction giving rise to the instrument. §3(2) N.I.L.

It was argued secondly that the acceleration clause impaired the time certainty requisite of negot. "Upon default of any one of the interim pymts., the holder can declare the full amt. payable immediately." [However, this really says "on or before" the maturity date, and under N.I.L. §4(2), so long as the holder does not act at his whim or caprice as that would defeat negot. (there is no N.I.L. provision on that point, but it is settled by judicial "enactment.") That's the * whim or caprice rule. However, this case did not deal w/ holder's whim or caprice because something outside of the holder's control had to first happen before the full amt. could be declared payable; the maker had to breach.

U.C.C. §3-109(1)(c) eliminates "whim or caprice" rule, and still makes note negot.
See also 1-208 of Code.

Hypo: X borrows $10,000, payable $1000 per Jan. 1st for the next 10 years. X wants a pre-pymt. clause in case he can pay all before 10 years. — The bank would not favor this because they would be deprived of their interest for 10 years. So, if the bank were to allow this, X would probably have to pay for the clause.

Pre-pymt. Clause

Options

The option in the maker to pay in $$ or in stock will impair the negot. If the option were in the holder, negot. not hurt.

RULE OF LAW

[But, an *if* is an option in the maker to pay on or before the due date, the negot. is not hurt.]

(p.

Hypo: X secures $10G loan w/ mort. on B/A. Bank knows tax on B/A will fall before the loan is paid. So, bank puts in clause in note, "Mtgee. will pay all taxes wh fall due before maturity date." — Since taxes vary, the negot. would be impaired = No sum certain.

Quaere: Can this type of provision ever be included w/o impairing the note's negot.? You

Mortgage Reference Clause

could make the provision in the mtge. w/ a mortgage reference clause in the note. But, what would be an adequate Mort. Ref. Clause wh would not impair the negot. of the note? ["This note is secured by the mort. dated ______." This is short + sweet, and this allows you to put in anything in the mtge. The acceleration clause in the mtge. could be at the whim + capriciousness of the holder in this case since it is not in the note. e.g., "The full amt. shall become payable when and if the holder (mortgagor) ~~feels~~ insecure." (Very subjective.)

(p. 246) Nat'l. City Bank of Cleve. v. Eskine + Sons, Inc.
Note secured by chattel mtge. Chattle mtge. says "when the holder feels insecure." Ct. said

Holding

[that since that clause was in the mtge. + not the note, and y was only a mere reference to the mtge., the negot. of the note is not impaired.

[A note's negot. can be impaired only by the provisions in the note, and a security wh has "non-negot. provisions" will not

impair the negot. even tho' referred to by the note, so long as the reference does not incorporate the instrument of security.

Confession of Judgment – actually is authorization by a maker to the holder to be maker's agent upon default to go into ct., admit liab. of maker, waive service of process, and suffer judg. against the maker in holder's favor.

Under NIL §5(2), this clause does not affect negot. if the instru. be not paid AT maturity. * See also U.C.C. 3-112(1)(d). Code in accord.

21 OCT. 59

*SEC. 12 COUPONS, BONDS AND INDENTURE * (Governed by Art. 8 of the Code)

Quaere: To what extent can the negot. of instru. #1 (note) be impaired by provisions of instru. #2 (collateral instru.)? Not at all in the absence of any refer. clause in #1 to #2. The only time provisions in #2 might impair negot. of #1 is on y is a refer. clause in #1 to #2 (wh incorps. #2). This, too, would depend on

Coupon = amt. of interest & when due.

Bond = repr. amt. of principal debt

Under U.C.C. (Art. 7), a warehouse receipt is negot.

the kind of refer. clause. The more spec. the refer. clause, the more likely it is to cause non-negot. of #1. "This bond is subj. to + governed by mort. # ___ and the provisions of that mort are hereby incorporated." This would destroy negot of #1 if the incorporated provisions are "non-negot." in nature.

* No-Action Clause - maker says, "Don't sue me first in case of default, but go against the trustee." If this clause were in the instr #1, negot would be impaired due to lack of uncond. promise.

Quaere: If a HIDC got a note like the above w/ such clause, would he take subject to it or free of it? (Assume the note to be negot. as the N-A clause is in the collateral instrument.)

Mm. says no, i.e., free of it. - If HDC took w/o notice of the limitation, he takes free of it U.C.C. 3-119.

Kohn v. Sacramento Elec., Gas and Ry Co. (p. 264)

Bonds stolen from payee & sold to P. D asserts the non-negot. of the note and que: P got no title since he stood in the shoes of the assignor, thief. * Non-negot. was alleged by D on the ground that the mort. refer. clause impaired negot.

Holding — Ct. said the mere existence of the M.R. Clause impaired negot. whether or not there were provisions in the mort. wh impaired negot. of the bond.

Stat. was passed to avoid the situation in Kohn Case. — The Calif. stat. was not effective because it had no refer. to a M.R. Clause, the very issue of the Kohn Case.

Enoch v. Brandon (p. 269)

Quaere: what type of M.R. clause will not impair negot.?=

D's defense was that P had no title. Ct. held that the clause here did not impair negot., and lawyers then began to copy the phrase. However, the ct. ~~said that~~ had difficulty because Old Colony Trust Co. v. Stumpel (N.Y.) had almost identical language & had been previously held non-negot. by the N.Y. Ct. The cases were distinguished on the ground that Enoch clause referred holder to instru. #2 only to ascertain his rights against collateral in case of default, but that Old Colony clause referred the holder to the #2 instru. to deter. what he must do as a cond. to the #1 instrument.

Enoch clause v. Old Colony clause

Under the N.I.L., Bonds & Notes apply. If, under NIL, ref. is to collateral security to ascertain holder's rights — negot. If ref. is to deter. a cond., not negot.

See U.C.C. 3-105 (1)(e) and (2)(a). So, under the U.C.C., you must follow 3-105 (1)(e). This section has no application to bonds because Art. 3 applies only to bills and notes, and corp. securities come under Art. 8. So, in a bond under Art. 8's def. of negot., any type of mort. ref. clause matters not.

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Rittenhouse v. Lukens Steel Co. (p. 273)

Even tho' P's rights to collection were impaired by requiring 25% of the stockholders to join, still negot. - Tough luck for holder!

If a bond contains a refer. clause to #2 instru. wh #2 contains a no-action clause, it is a negot. instru. despite the refer. clause. However, the holder must comply w/ the no-action clause in the collateral instru.

In Mass. under the U.C.C., it does not matter if ∃ is a refer. clause in #1 instru. since Art. 8 does not apply to bonds but only to investment securities wh need only to qualify as a corporate security and not as a negot. instru.

Sec 13: Share Certificate and Shares

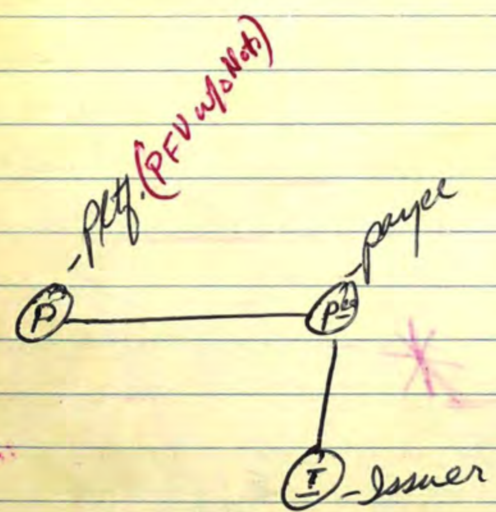
How can we reconcile these to be negot. under N.I.L. I

In Code states, U.C.C. 8-102 applies to S.C. + bonds (securities generally). That takes the place of the U.S.T.A.

in compliance w/ the requisites of negot.? The words "or order" will not be found in a S.C. There is no time certainty nor even an uncond. promise to pay. In fact, not even a cond. promise to pay since the S.C. is only evid. of a muniment of title to a certain share of the earnings of the corp. There is no sum certainty. But, it is written and signed.

Yet, these S.C. have been dealt w/ + recog. by big people as negot. instruments. So, custom has a bit of effect. But the real reason for the S.C. being recog. as negot. is the Uniform Stock Transfer Act — the "N.I.L. for share certs."

It can be acquired from the orig. owner, and the purchaser for value w/o notice of any defect takes free of defenses against his vendor. The issuer cannot assert against the P any equities or defs. wh the issuer may have had against the payee.



*Even at C.L. (w/o the use of law merchant) wh viewed the instru. as non-negot. there were two ways for P to win:

(1) Estoppel – there must be two requirements met here for P to win:

(a) P must have poss.

(b) P must have some author. (in the possessor) to make some disposition of the prop.

hypo: A tells B, a seller of casebooks, to keep a casebook in the desk for A for two weeks, but that A has no author. to sell the book. B sells the casebook to a BFP. — A v. BFP – J/A (under C.L.). The only defense that BFP would have would be estoppel, + here element (b) is lacking.

hypo: "You can't sell it for less than $35.00." B sells it for $20 to BFP. – A v. BFP: J/BFP. B had some author. to make some disposition, plus poss.

hypo: "You can display it in your window along w/ other casebooks, but you can't sell it." – Toss up here. Could be argued either way.

Code: Under the U.C.C., requirement (b) has been eliminated.

Powers of holder to make some disposition of a N.I. (by custom).

Custom + usage recog. the power of a holder or poss. of a negot. instru. to dispose of the instru. ~~Not so~~ Custom + usage don't recog. per. prop. in some way.

Thief can trans. title to BFP of S.C.

(2) BFP of a legal title w/o prior notice of a conflicting eq. title. —

Rule of Law re equal titles

[At C.L., if there were 2 conflicting titles of equal weight, first in time first in right. The BFP rule does not help here.

hypo: A promises on 3-1-59 to sell B/A, to X. Same on 3-2-59 to Y. Both have eq. title. J/X: first in time first in right.

hypo: A actually made K w/ Y, a BFP w/o notice of X, to convey + does convey B/A to Y. — X v. Y — J/Y. This is the only place where a BFP of a legal title second in time prevails.

hypo: Issuer (I) leaves blank endorsed w/ X, an agent. X transfers to P, a BFP. — I v. P — J/BFP. Here, estoppel would apply. Also, the second (above) method would apply.

Standard Quaere:

[Is the victory of P based upon a recog. by the ct. that the instru. is negot., or does the ct. rationalize on the basis of one of the C.L. rules? (Ask yourself this quaere when reading these cases.)

hypo: (Custodian of alien enemy prop.). X, German citizen in Feb., 1914, deposits his U.S. Steel share certs. w/ the Bank

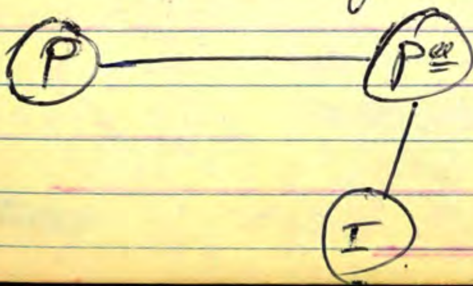
of England due to fear of war. When war came, the Bank of Eng. took the stock under Arts. of War as custodian of alien enemy prop., then presented the stock to U.S. Steel. Latter refused to recog. Bank, and Bank v. U.S. Steel, alleging that it is entitled to the benefits of the S.C. as holder thereof. — If the ct. were to decide this, it could not apply the estoppel theory because of lack of requirement (b). C.L. Theory #2 could not be used because the bank not only was not a purchaser for value, but was not in contention w/ any Eq. title since ∃ was none. So, the ct. could only find for P, if at all, on the basis of the S.C. being negot.

Theories of Recovery

26 OCT. 59

Caveat: From here on in, be sure you know from the facts whether P relies on strict negot. or on some C.L. principle.

Bank of Culloden v. Bank of Forsyth (p. 281)



BFP v. Issuer of a S.C. The Pee borrowed from P-BFP + gave S.C. as a pledge for the loan. Now, Pee defaulted & P wants issuer (I) to change

If a transferor, who is enjoined from trans. a S.C., negotiates it to a BF holder, the BF holder takes full title anyway: eq. acts in personam, & not in rem.

its books to read P as the holder and rightful owner. (Thus, in equity.)

⊛ D's defense was that there was an unpaid balance owing by P^ee to D, and a co. by-law provided for a co. lien to the extent of the unpaid balance. If the S.C. were not negot., the P would stand in the shoes of P^ee and the defense would stand as against P. However, here J/P: the ct. decided on the basis of C.L. theory #2. But, what was the eq. interest here? The lien was only an eq. interest because D did not have poss. of the thing on wh. the lien was asserted, the S.C. If D had had poss., there would have been a legal lien.

See also 8-204 & U.S.T.A. 15.
8-204: restriction on transfer imposed by Issuer, tho' otherwise lawful, is ineffective (except against a person w/ actual notice) unless noted conspicuously on the security.
8-103: Right of Issuer to lien is invalid unless noted conspicuously on the security

(Re notice, see U.C.C. 8-103.)

Thus, the S.C. was held to be the prop. and not merely evid. of the prop. If the latter, the lien would have been legal, not eq. because I would have had poss. of the prop. of wh. S.C. was evid.

Since the P had legal interest & D an eq. int, & since P was a BFP, ~~first in time first in right~~ the legal title cut off the eq. title.

⊛ C.L. theory #1 would

have worked here because P could show that P[ee] was possessed of author. to make a disposition of it, such author. often arising from custom and gen. by usage. (P[ee] must have been given poss. by D.)

Issuer could have avoided this by having the lien appear conspicuously on the face of the instru.

Turnbull v. Longacre Bank (p. 288)

P, stock brokers & dealers in securities handling Issuers' S.Cs. A messenger stole the certs. & D, w/o notice & for val., bought the certs. P's got new certs. from I but had to indemnify I. P v. D to get the S.Cs. in poss. of D. (Ins. Co. may have been behind P).

Negotiability allows a holder to take free of equities of defense and equities of ownership.
Eq. of defense: between the issuer + a subsequent H.
Eq. of ownership: between P[ee] and a subsequent H.

* This couldn't have been C.L. theory #2 because y was no outstanding eq. title since P had legal title.

C.L. theory #1? (estoppel) y was an entrustment of poss. in messenger & he had some author. to make some disposition. Further, they were endorsed in blank; thus messenger could have via custom + usage disposed of it because * the bearer of a S.C. wh is blank endorsed is deemed to have author. to pass title by delivery alone. Thus, the real issue was whether from custom & usage y is power to transfer title to a S.C.

Rule of Law re Blank Indorsements

ISSUE

D here could have won on either negot. of S.C. or on Estoppel.

by delivery alone on S.C. is blank indorsed. Held, yes.

Here, P is alleging that he has lost an eq. of ownership.

Rule of Law

If an instru. is negot., it permits the HIDC to cut off not only a prior eq. of defense, but also an eq. of ownership. So, D was contending that the S.C. was negot. & thereby cut off the P's eq. of ownership.

Estoppel would be ruled out if messenger stole the certs from P, thereby elim. entrustment of poss. Thus, y can be this type of case on the only possible theory of victory for D would be negot. of note. See ⊛ U.S. Steel Corp. case in note, p. 295. ⊛ See U.C.C. 8-317.

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Mills v. Jacobs (p. 292)

Attachment of S.C. ⊛ At C.L., S.C. was an intangible chose & could be attached only at the situs of the stock.

⊛ Under the more modern view, you can attach at the situs of the S.C., too.

Under U.S.T.A. 13, Not valid attachment unless made on books and attachment of S.C. per se. The gen. rule is that an attachment of only the books is not suff. under the U.S.T.A.

⊛ In Mass., you must go into Eq. and bring a Trustee process via a bill to reach + apply. — Ord., atty. only files the proper papers w/ the (law) "Superior

U.C.C. 8-317 in accord w/ U.S.T.A. 13.

Cf." *Min. view holds that attachment of S.C. is only in addition to attachment of stock (i.e., books).
*Maj. view - only S.C. needed.

* Sec. 14 Registered Paper *

Quaere: What is a reg. paper and what might prevent it from being negot? It means that it has been made transferrable on the books of the corp. only. The corp will recog. X only if X's name appears on corp. books. — *"Until transfer is made" is the usual stipulation.

Falls short of being S.C. but is evid. of prop.

Quaere: What advantages to corp.? — Will know exactly to whom and to on the int. pymt. should be sent. *Analogy: dividend pymts. on s.c. ("to holders of record.")

No "or order" or "or bearer" here. Is this a negot. instru? No. Is y some C.L. or law merchant provision? = No.

Scollans v. Rollins (p. 307)
This is the minority opinion only.
P[tt] holder v. BFP holder for conversion of certs. of indebtedness (Not a bond; unsecured)
Payee gave broker some certs. as collateral on loan to P[tt]. P[tt]

On certs. of stock indorsed in blank have been stolen, and the thief or his transferee has obtained a registry on the corporate books and obtained new certs. of stock, and these new certs. have been sold, the purchaser w/o notice is protected in his poss. of the stock. Rand v. Hercules Powder Co., Inc. (p. 321)

defaulted + broker sold to HIDC – Defendant.

This case turns on whether is some C.L. action upon which P could recover since the instru. was not negot. (no "or order" or "or bearer"). Neither estoppel nor entrustment could be argued.

* Maj. opinion said that broker only got by transfer from P's the envelope, not the certs. sealed inside.

* Min. opinion said that by usage allowed this to be transferred as freely as a negot. instru., thereby allowing holder to take free of the defenses against the transferee. So, judg. should have been for D.

Reynolds v. Title Guar. + Trust Co. (p. 311)
Pledgee v. Issuer. Pledgor trans. the instruments on the books + pledged them as security for a loan from P (pledgee). Pledgor then defaulted.

Entrustment would not fit because the papers given pledgor were blank, + entrustment bespeaks entrustment of perfected prop. wh could be transferrable as it was rec'd. by the entrustee.

No negot. here of course.

Action to get re-issue of the certs
J/D/A.

Rand (ex-holder) v. Hercules Powder Co. Inc. (Issuer) (p. 321)

"Any person, who accepts an attempted trans. of title w/o delivery of a bond, takes only such title as the orig. registered holder may still have, + subj. to the risk que le bond may eventually turn up in the hands of a 3rd party who, at least as between himself + the orig. holder, has acquired full ownership." Reynolds Case, (p. 311.)

On an instru. is not negot. y can not be a negotiation of it, but only an assignment, and the As^ee will stand in le shoes of his As^or, and is subj. to all defs. wh can be asserted against the As^or.

Sprague misreps. himself to be official of D, and was authorized to trade 1/4 of common stock in poss of Sprague for 1 share of preferred stock in poss. of P^ee.

Ct. held that (on law merchant principles) the BFP of the preferred stock must be protected, whereas the BFP may be down the line. Thus, the instruments were held to have been validly transferred, + the holder would be protected against defenses of Issuer or P^ee against the holder.

Instru. not negot. here.

Could estoppel be argued here?

ESTOPPEL BY REPRESENTATION

Estoppel by Repre. - whenever an I issues a S.C. or bond, he represents to all the world that any taker or holder from P^ee will hold free of any personal defenses the I may have against the P^ee.

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Theory of recovery here was akin to the doctrine of Prom. Estoppel, called Estop. by Rep: HPDC could allege that the I has made a rep. to all the world

{BFP of new certs. completely protected. - BFP of old certs. is not protected unless the T.O. is estopped by one or both of the C.L. theories.

and that the HIDC has relied on that rep., and that ∴ I should be estopped. Premise is that I HAS made a rep. Sometimes it is actually found ~~t~~ in the instru. However, it is deemed to be in a corp. cert. or security whether or not it's actually ∃.

* Transfer and Negotiation *

Sec. 15 Blank + Special Indorsements

Sec. 30 N.I.L. Today, an instru. wh is negot. must be negotiated (word of art.) At C.L., transfer was the mode. Today, negotiation is the mode.

Quaere: What must happen for a trans. to be a negot. (Trans. at C.L. = assignment)?

TYPES OF INDORSEMENTS

∃ are 4 basic kinds of indorsements:

(1.) Blank Indorsement - P^ee merely signs his name on the back. Intent ~~unnece~~ immaterial since delivery only necessary. Tho' an order instru. at first, upon blank indorsement it becomes a bearer instrument. Anyone w/ the indorsed instru. is the owner.

N.I.L. 9 Thus, ∃ are two kinds of bearer instruments: (1) "bearer on the face" instru. (2) Bearerized order paper. In the hands of the indorsee,

Indo (spe

it remains a bearer note. Thus, if In^ee loses note, finder becomes owner.

(BACK)

Pay to X,
M. H. Jackson

(2) Special Indorsement – this type of instru. requires the special indorsee's indorsement for any further negotiation. If lost & finder indorses w/o X's indorsement, the party taking from finder would only be an As^ee of a chose in action, standing in the shoes of the finder. *The indorsee (X) can protect himself by putting in "Pay to X" above a blank indorsement, and the legal effect is the same as if Jackson had put those words. (N.I.L. 35) (3-204 (3) in accord).

Indorsement to a fictitious P^ee (special) = blank In^mt.

(BACK)

Weiss, w/o recourse

(3.) Qualified Indorsement – custom & better reason dictate that the words will begin on the same line as the indorsement. Runs between indorser and indorsee. So, indorsor = As^or and indorsee = As^ee, but strangely enough, the As^ee stands in BETTER shoes than the As^or stood: N.I.L. 65 relates also to a qualified indorser: warrants (1) genuineness of instrument, (2) that he has a good title, (3) all prior parties had the capacity to K, (4) has no know. of any fact that would impair the validity of the instrument or render it valueless.

(N.I.L. 38)

What is Warranted

So, even tho' many doors are left open to reach indorser here (qualified), an action on the instrument would fail as against that qual. Indorser. But, br/warr. would stand.

because it was endorsed "w/o recourse."

An action against the drawer would still stand because the QI would not impair the negot. of the instru. N.I.L. 38, 47.

(Re 47, Liberman says that a R. In^st does not impair the negot. Once negot, always negot.)

*The qual. indorser's freedom from action on the instru. is against all subsequent takers. But, see phrase following N.I.L. 65 (4).

(4.) Restrictive Indorsement - "for deposit only"; "for collection only." - Tells the whole world that altho' he indorses the instru., he still owns it. This repre. to all the world const. notice; thus, no one could possibly be a holder in due course of a restrictively indorsed instrument since a HIDC must take w/o notice. But see U.C.C. 3-206.

"pay any bank"
See U.C.C. 3-205, 3-206.

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Edie + Laird v. The East-India Co. (Chk. 338)
Holder v. Acceptor-drawee. D alleges that P must prove that he has title; that it can't be a spec. ind. because the words "or order" were lacking, and that y was already too much y to allow it to be a

blank ind.

Quaere: Must the words "or order" appear on the back to have a special ind.? — No — N.I.L. §34: "... or to whose order."

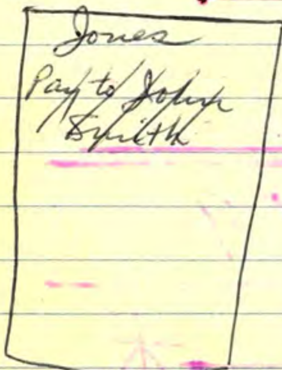
N.I.L. 35 says you can write above the blank ind. to make it a spec. ind.

Peacock v. Rhodes (cbk. 341)

D alleged that this was not a bearer instrument.

Holder v. Maker. — Ct. held that this was a bearerized paper due to the blank endorsement and that title was passed by delivery. §34 NIL.

Parker v. Roberts (cbk. 344)



Re a bearer instru. wh has been spec. ind. See §40. Cf. §§ 9(5) and 48 (striking out indorsements).

∴ is an inconsistency between 9(5) and 40. But, the Mass. Ct. here said: this was an order on its face w/ a blank indorsement on the back followed by 2 spec. inds.

N.I.L. 59 — every holder (§191) is deemed prima facie to be a HIDC.

D contends that he(P) need prove that he was an indorsee before he can maintain the suit. P showed that the remaining ind. was blank, and the court held that on ∴ is bearerized order paper, once bearer always bearer.

Here was order paper w/ blank ind. followed by two spec. inds.

Rule of Law: [If an instru. is bearer on its face, it remains bearer.

N.I.L. 48: striking out indorsements not necessary to H's title.

Code

U.C.C. 3-204 — "ANY ...." i.e., an instrm. que is bearer on its face wh is spec. ind. can be negotiated only w/ the sp. indorsee's ind. — This was brand new and modified the rule of Parker and Roberts.
U.C.C. 1-201 (20) - defines "holder."
However, 3-603 weakens 3-204 because "any party is discharged to the extent of his pymt. or satis. to the holder...." Includes blank indorser.

hypo: order paper, blank ind., followed by special ind. — Under N.I.L., spec. ind. may be struck (?)
Better Rule (Liberman) - cannot be struck. U.C.C. 3-204(2) in accord.
Absent agreemt. to contrary, transferee entitled to "unqual." ind. Simpson Case, p. 350.

A negot. instru. wh is order on its face but not ind., taker must go into eq. to compel transferor to ind., and the negotiation takes effect as of the time when the ind. is actually made (§49)

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* Sec. 16 Fly Power & Qual. Indorsement *

It may also be on an allonge whenever the necessity or convenience of the parties requires it.

An ind. can be made either on the back or on an allonge when you run out of space on the back of a negot. instru. (rare). N.I.L. 31.

And, in any case a cert. is ind.* tho' it has not been delivered. U.S.T.A. 20.

*On a share or stock cert. the signature w/o more is suf. as an ind. anywhere on the back of the share cert. S.T.A 20.

Fly Power (i.e., stock power) — a written assignment form.

An indorsee of a S.C. does not warrant that he will pay if the issuer does not pay, because the issuer himself does not warrant that he will pay only is a S.C.

* A S.C. can be transferred by two methods:
(1.) Ind. on back
(2.) Delivery of S.C. along w/a fly power assignment form.

A transferee of an unindorsed negot. instru. has the right to compel the indorsement of the transferor. N.I.L. 49

If the S.C. is transferred w/o ind. and nothing more, transferee still has full legal rights, PLUS a right to go into Eq. to compel the indorsement, thus changing his ~~status~~ status from that of a mere transferee to that of a holder I.D.C. by recourse to equity.

Treadwell v. Clark (cbk. 358)

Orig. owner of S.C. v. BFP from pledgee to get the S.C. back. P signed only his name (sufi) but in the wrong place. The S.T.A. was not in exist. at the time of this case, so the result would have not been the same if the S.T.A. had been in effect as it does not matter

under that act on the signature is placed. S.T.A. 20.

Even so, P could have argued C.L. estoppel. This was involving a pledge wh means that if the pledgor had defaulted, pledgee had power to sell the pledge.

To be effective to cut off the prior owner's rights, the fly power must contain a description of the S.C. Altho' a S.C. indorsed "by name "w/o more" would be suf., a blank S.C. w/ a fly power wh is signed "w/o more" will not be suf. Edgerly v. 1st Nat. Bank of Boston, 292 Mass. 181, 197 N.E. 518 (1935).

Must be description of what is being assigned, in the fly power.

Good Fellows Associates, Inc. v. Silverman (p. 362)

Transferee #1 v. Transferee #2. Why not "first in time ..?" The ass.ee of prop. who does not have poss. has an eq. int.

Here, #1 had fly power but no S.C. #2 had the S.C. J/#2.

A legal right is one wh can be asserted against all the world.

An eq. right is one wh can be asserted against the whole world except a subsequent BFP w/o notice of the prior eq. right.

Legal Right v. Equitable Right

"First in time first in right" would not apply where, as here, y is a subsequent legal title w/o notice of a prior eq.

#1 = eq. title only
#2 = legal title (poss.) + eq. title (right to compel in eq. an indorsement by the transferor).

title. The eq. titleholder (P) had a right to go into eq. and compel an ind.; but until such happens he is not a legal titleholder, but an eq. titleholder.

In a qual. indorsement, use the words "w/o recourse" as they have almost become words of art.

Rule of Law

* S.T.A. 4 codified Good Fellows Case, because that sec. 4 says that a subsequent purchaser who derives his title from the certificate will extinguish a prior title derived from a separate document (e.g., fly power or assignment).

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People's Bank v. Kurtz (Chk. 373)

P took prom. notes and also S.C. as security for the prom. notes. The notes were worth about $16,250 and got S.C. worth more than that amt. (800 shares were represented). The S.C. repre. an over-issue: each corp. when it begins has a certain no. of shares that it can issue as estab. by the corp. charter, i.e., the author. capital stock. Any additional share above + beyond the author. issue is an overissue, and that's illegal.

OVERISSUE:

The issuer warrants validity of the S.C.

The corp. would still be liable to a HIDC of the S.C., whether the over-issue was by fraud, mistake or inadvertence. Quaere: What can corp. do if we say that on one hand the corp. is guilty of an illegal act, and on the other hand it is liable to the HIDC? = There are two possibilities:
(1) Retire some shares, or if that can't be done,
(2) Have HIDC compelled to accept money dams.

P here claimed that D breached warranty "that the instru. is at the time of his indorsement valid and subsisting." §66 N.I.L.

Warranties

In K law, an assignor of the K warrants everything but the collectibility of the claim. In a negot. instru., even the latter is warranted. §61 N.I.L.

If P had suffered loss merely because of the decline in value of the stock, tough! The D can't be expected to warrant the continued value of the stock.

There is also a warranty of genuineness - that there is such a corp. and that the signature is not a forgery.

A qual. ind^mt on a S.C. cuts out S.T.A. 11 (c). That's the effect of a qual. ind^mt.

Note: Table of contents at beginning of U.C.C. Art. 8 will convert N.I.L. sections to corresponding U.C.C. provisions.

(Sec. 17) * RESTRICTIVE INDORSEMENTS *

"for collection"
"for deposit"
"pay any bank" (code)
"pay to X Bank only"

!Caveat!: you must sit down + master what words const. R.I. MUST DO THIS!

hypo: "I transfer all of my right herein." — Not S.I. because In^ee must be named. So, cts usually say that it is not clear that In^or intended to limit the rights of the indorsee, and if he had intended to use a Q.I., he should have used the accepted words "w/o recourse." — So this would be a blank indorsement.

N.I.L. 36, 37
U.C.C. 3-205, 3-206.

hypo: (1.) "Pay to 1st Nat. Bank." - S.I.
(2.) "Pay to 1st Nat. Bank only." - R.I.
why? = See U.C.C. 3-205(c); implies intent to retain title until the restriction is met.

Effect of Restrictive Indorsement

[Effect of R.I.? In^ee acts for whomever is the bene. of the instru. w/ the R.I. Usually, the In^ee will set himself up as the beneficiary.]

hypo: A R.I. to B who B.I. to C. — The

blank indorsee (C) will be the agent of A. N.I.L. 37: "all subsequent indorsees acquire only the title of the first In^ee under the restrictive Indorsement"

N.I.L. Rule of Law

If the maker of a note makes it for the use of X (3rd party), it is important that X get the same status as maker, thereby getting protection by 37. Subsequent indorsees to the bene. take only as agents of the bene. and 37 still applies.

Gen. Rule

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Lloyd v. Sigourney (cbk. 378)

The money must be applied as per the R.I.

Restrictive In^er v. In^ee. — A restrictive In^ee is NOT entitled to keep the money he has rec'd by virtue of the instru. if the instru. otherwise provides.

White v. Nat. Bank (cbk. 381)

On y is mutual mistake in a K re a basic fact, the K may be rescinded. (K law)

In^ee v. R In^er in Restitution for money had + rec'd. Quaere: Why not an action on the N.I.? = In^ee merely an agent of In^er.

Quaere: In Rest., when can P recover? Can be brought for certain benefits conferred by P on D. Those benefits:

1. On y is mut. mistake of fact
2. On D's tortious or criminal acts resulted in the conferring on D by P of the benefit.

Even a breaching party can get Rest.

RESTITUTION

In Rest., the value of the benefit is the measure of dams.

On D has only to pay $, Rest. will not apply.

So, in White case, the value of the benefit was value of instru., and P alleged mut. mistake: D's were unaware that y was a R.I. and that they were both wrong.

So, court said that the intent of the parties will be considered in light of the facts of the given case.

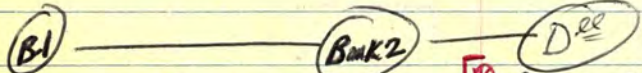
N.I.L. → * Drawee cannot be a HIDC.

* So, even on y may not be recovery on the instru., y may be possibility of recovery in restitution.

y is no recovery in Rest. by the Dee against the cash receiver on the Der's name is forged. Price v. Neal

1st Nat. Bank of Sioux City v. John Morrell & Co. (cbk. 385)

Bank #2



Effect of R.I. on Subsequent Inees under N.I.L. and Code:

* Under NIL, once y is a R.I., all Inees are agents. * Under Code such is not. So, under Code Bank 2 would be a R.Inee only if Bank 2's immediate Inee was a R.Inee.

U.C.C. 3-206(2) - applies only to banks.
U.C.C. 3-206(4) does not apply to banks.

* A warr. made by an Inor is made only to a HIDC.

The code rule above applies only to Banks. So, if A is a R.Inor and B, C, D are banks, C & D will not be deemed agents of A under the R.Inmt.

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In so far as a trade acceptance is concerned, it seems that the R Indee is in a better position than the R Indee.

Cont. Nat. Bank + Trust Co. v. Stirling (p. 388)

Under N.I.L., a R Indee cannot be a HIDC. But, a R Indee of a trade acceptance can be a HIDC.

Defense of no consid. was rejected because the R Indee of this trade accept. was held by the ct. to be a HIDC. Ord., however, the R Indee is not a HIDC, but there are reasons why this holding in rel. to trade acceptances. Query - What sayeth U.C.C. re status of R Indee? Can be a H.I.D.C. if intermediary bank. 3-206(3).

Galbranson - Dickinson Co. v. Hopkins

Eee v. Guarantor. D alleged C.L. estoppel on P. However, due to the endorsement, it was made notice to all that the agency of the agent - Eee was limited for the specific purpose.

Because a R Inded S.C. has little value as collateral security, this case is almost alone, + most banks will not take a S.C. that is R Inded. Usually want a Blank Indmt on a S.C.

(Note 8-304(1)(a): NOTICE to Purchaser of Adverse Claims)

Q. To what extent does a R Indmt on a Neg. Instm. lessen the effect of an argument of estoppel on such could properly be made? = Creates notice wh negates ostensible title in R Indee.

* Sec. 18 Prior Indorsements Guaranteed *

The liab. of D may differ depend -

ing on the type of action: conversion, on the instru., br/warr., K, Restitution.

*The rule that even a thief can pass title to a subsequent taker, applies to a bearer instru.

*An order instru. can only be effectively negot. by the indorsement of the P^ee.

On an order note, title cannot be divested by a forger. The forger can't pass good title.

Thus, maker → P^ee ---→ forger → Bank = P^ee can sue the Bank in tort for conversion: Bank exer. an unlawful ~~conversion~~ dominion.

(p. 409) Blacker + Sheppard Co. v. Granite Trust Co.

Restitution would not lie: lies only for a benefit conferred. This case said that the P^ee can sue the converting D^ee (bank).

D^er could sue D^ee because there is privity between them + D^ee violates D^er's instructions when a forger, or a forger's indorsee (even innocent) is paid. The D^er could bring K, + also could bring an action against bank for re-crediting (putting money back in D^er's account).

Maker → P^ee --→ Forger → Innocent In^ee → Bank. Bank pays

Inᵉᵉ from forger. Bank could sue Inᵉᵉ in Rest. because y has been a benefit conferred by bank & pymt. mistake re the validity of Inᵉᵉ's title. — If Inᵉᵉ knew of forgery, y would be fraud and Rest. would again lie, esp. since y was also a benefit conferred.

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Rule of Law — Title to an order instru. cannot pass thru a thief or forged indorsement. (Bearer note can. Miller v. Race.) Thus, on Dᵉᵉ pays a forger or a forger's transferee or indorsee, since Pᵉᵉ retains title, Pᵉᵉ could sue Dᵉᵉ in tort for conversion: Dᵉᵉ exer. an unauthor. dominion over the Pᵉᵉ's prop. ⊛Blacker & Shepard Co. v. Granite Trust Co. Pᵉᵉ could sue Dᵉᵉ on Dᵉᵉ refuses pymt. on a properly presented valid note, action to credit Pᵉᵉ's acct. — a K type of action for br K. Thus, def. of no consid. or other K defs. could be asserted.

Quaere: What could Dᵉᵉ-bank do against the cash receiver (from the bank)? = K not possible. Suit on the indorsement would not be maintainable because y has

been no warr. of title since the engagement under 66 is to a HIDC. Thus, not br/warr. since an indorser makes the warrs. only to a HIDC. NIL 66.

NAME CASE = Canal Bank v. Bank of Albany

Dee v. forger's Inee. action would be in Restitution because a benefit has been conferred & y has been mutual mistake as to ~~~~ the title of Inee. Both mistaken as to whether Inee-cash receiver was a HIDC, -a mistake of fact. If mistake were as to whether Inee had title, a mistake of law + mistake of law usually not good basis for Restitution.

Rest. action is the principal action available to a Dee-bank.

Quaere: ⊛ Suppose the cash receiver were the forger himself, what action could Bank-Dee have against ~~~~ forger? - It could not be in conversion since Dee-bank did not have title. An action in Rest. would lie but on the grounds of fraud.

This Rest. would be available only on the forgery is that of the Pee or some subsequent Inee. So, whenever referring to this case, you

must include the phrase "forged indorsement."

Rule of this case — [This case stands for the proposition that a D^ee -bank can recover in Rest. against a forger-cash receiver on there was a forged indorsement.]

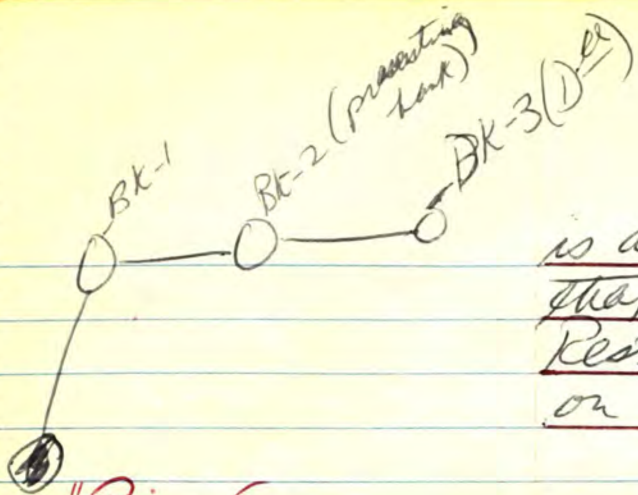
Re Payor's (bank's) right of subrogation (to D^ee's right against cash receiver) is allowed under the Code -4-407. Not under N.I.L.

Raised Paper — On y has been raised paper, P would get difference between orig. amt. of note & the amt. paid. ⊛ If the raiser's D^ee is sued, Rest. by bank would lie on mut. mistake. ⊛ If bank sued cash receiver - raiser, Rest. on fraud.

[The problem in raised paper & forged indorsement is same. D^ee would have right of recrediting of his acct. in both situations, & D^ee has right to proceed in Rest. on mut. mistake or on fraud.]

Nat'l. Park Bank v. Seaboard Bank (p.412)

P = D^ee
D = presenting bank) Rule of Law — [On the D is an agent & has rec'd a benefit from P, & on P knows D is an agent, & on D has remitted the benefit (rec'd from P) to the principal-bank, an action of Rest. will not lie. This



"PRIOR INDORSEMENTS GUARANTEED."

is an exception to the general rule that y can ord. be recovery in Rest. here. This exception applies on y is mut. mistake.

The agency arose due to R. D^mt.

The banks have now remedied the above situation: the presenting bank will stamp "prior indorsements guaranteed" on the instrm. before presenting to D^ee-bank. This means that Bank 2 (presenting) guarantees all prior indorsements & this gives D^ee-bank c/a against presenting-bank.

U.C.C. 4-207(1)(a)

Under U.C.C. 4-207(1)(a), "prior indorsements guar." is not needed because the U.C.C. says that warranties run from the presenting bank to D^ee-bank. Under N.I.L., warrs. don't run between presenting-bank & D^ee bank w/o "P.I.G."

Share Certs.

Rules are the same on a S.C. is involved. A spec. In^ee is in same position as P^ee who has not Indorsed.

18 Nov. 59

SEC. 19. * FICTITIOUS PAYEE AND THE IMPOSTER *

On D^er v. D^ee for recrediting of D^er's acct on D^ee has paid on a forged bearer note,

N.I.L. 9(3): "The instru. is payable to bearer ... when it is payable to the order of a fictitious or non-existing person, + such fact was known to the person making it so payable."

D's can estab. defense that it was entitled to pay the bearer of a bearer note.

A second defense available to D's bank, under sec. 9(3) is on the payee is a fictitious or non-existing person and such fact is known to the person making it payable (may not necessarily be the D's).

Hansen v. Northwestern Nat. Bank (p. 422)

U.C.C. 3-110(1)(e): an instru. payable to "an est., trust or fund" is payable to the order of the representative thereof. — N.I.L. does not so provide.

The "Hansen Est." was not a person + P knew it when he made the note payable, thus making the note payable to bearer. Thus, D did not have to recredit P's acct.

Minn. later passed stat. saying that any instru. payable to an estate will be deemed payable to the administrator of the estate. Thus, element #1 of 9(3) was abrogated by that stat.

Shipman v. Bank of State of N.Y. (p. 425)

It cannot be treated as payable to bearer unless the maker knows the payee to be fictitious and actually intends to make the paper payable to a fictitious person.

The person who signs in the D's slot is the person making the instru. payable — always. Even if an agent signs, he and not his principal, will be liable as the person making it payable.

30 A.L.R. — y can be forgery of a fictitious person. So if A signs B name + B is non-exist., forgery.

Here, element #2 is missing — knowledge by the person making

the instru. so payable that the payee is non-exist. So, this could not be a bearer note, and P's action for recrediting was won.

Goodyear etc. v. Wells Fargo etc. (p.429)

Dr. v. De. - Bank here.

The intention to make the instru. payable to a fictitious person "must ... exist as an affirm. fact in the mind of the Dr. of a draft at the time of its delivery."

A ✓ drawn to a Pee, who may be an actual existing person but who is not intended to have any interest therein, is "bearer" paper. — J/Dee

De is the company itself — can't be touched, seen, felt, etc. But, a Corp. is a legal person.

Who was the person making the ✓ payable? = Rule of Co. required co-signer.

The payee here was fictitious but only one of the cosigners knew. Ct. held that it was suffi. if one of the signers knew. — Arbitrary. See U.C.C. 3-405 ("a person.." = only need one of maybe five signers.)

Russell v. 2nd Nat. Bank of Paterson (p.435)

On the Wms. checks, Baron's secretary's name is put thereon. Here, altho' y was a fictitious payee, the person making it payable did not know that the Pee was fictitious. But, Bank did win anyway because ∴ was no forgery. There was authorization by Williams for his signature, the court implying that an alias was O.K.

Time and Notice

After return by De bank of the cancelled checks to Dr., "if no error is reported in 10 days the account will be considered

correct." Per Shipman Case, the acct. may be set aside in case of fraud. But, failure to give prompt notice after the facts have been discovered has usually been held to defeat the depositor's cause of action, either completely on a theory of estoppel, or to the extent of the bank's injury caused by the negl.

19 Nov. 59

Russell Case (cont'd.)

① There were 2 telephone frauds by Baron. Russell v. Def bank on "Wms. checks" + J/Def. Bank prevailed: that even tho' it was order instru., there was no forgery because of the primary intent to give the instru. to the person who stood before Russell.

② "Wilson Checks" — messenger boy picked up the checks. Baron indorsed "Wilson" on back & they were cashed. — Could not be a bearer instru. because Pay did not know that Wilson did not exist & believed that Wilson did exist. So, this was order paper. = The signature of Wilson was of a non-exist. person, and it was not even an alias. Even tho' the ct. talks about forgery, this was really decided on the basis of Miss Russell's state of mind. Re the "Wms. Checks"

if Miss Russell were called to the bank to identify Baron as the person to whom the ✓ was made payable, she would do so. But, "Wilson checks" payee was never seen + she could not identify him as such. So, in the first situation, Dr would be precluded from getting recrediting, so the same result should be reached in that case by analogy.

In forgery situations on Dee pays forger, ∴ has been br/K because Dee has paid out of Dr's acct. w/o Dr's directive to do so.

Code [*U.C.C. 3-405 - eliminates the test of bearer or order paper. The only test now is 3-405(1)(a).

We should now speak in terms of the *Hypothetical Acquiescence Test: Dr's intent at time of drawing of instru. This test requires that the payee be capable of identification if such were to be done by Dr at the bank in front of the cashier (teller at bank). Thus, a corp., which cannot be identified, would not be w/in the ~~rule~~ H.A. Test. Of course, the H.A. Test would not apply under the Code due to 3-405(1)(a).

* Chapter IV Pymt. + Collection *

* The Price and Neal Situation *

Note, that all forgery discussion

thus far related to forgery of the P^ee's name or some other indorsement. Thus, the rules thus far should be read not in gen. regard to forgeries but spec. to forgeries of indorsements.

Now, we come to forgery of the D^ee's name and of the paper. A forged instru., or the forgery to of the D^er's name, is an absolute nullity — a nothing.

Price v. Neal

cash receiver (p. 446) "NAME CASE"

D^ee v. In^ee: An action on the case for money had + rec'd. (usually green light for Restitution action). There were two bills, the second of wh was accepted.

The real justification for denying Rest. to the D^ee bank was not on a neg. idea, but policy requires a stop somewhere.

Rule of Law: [A D^ee is not entitled to recovery in Rest. on a forged drawing against the cash receiver.

The acceptor is presumed to know the D^er's handwriting and by his acceptance to TAKE THIS KNOW. upon himself. — It's incumbent upon the acceptor to be satis. that the bill is the D^er's handwriting before he accepts it; it is his duty; + if he does not attend to it, it is a neglect for wh he should suffer, + not the holder whose duty it is nowhere asserted to be.

23 Nov. 59

Price and Neal is an exception to the general rule of recovery in Rest.

Quaere: Does the NIL adopt Price and

Price v. Neal is an exception to the usual rule re money paid under a mistake of fact.

Neal ?? = NIL 62 looks like it, but "acceptor" is used, and Price and Neal has reference to payor. However, the acceptor under 62 engages that he will pay the instrmt, and unless we apply Price and Neal it would mean that after a bank has paid under mut. mistake it (bank - D^ee) can recover the money in Rest. However, the general rule is that 62 does NOT incorp. Price + Neal. No other section of NIL directly applies except maybe sec. 196. Under NIL 196, since Price + Neal is the prevailing ct. view, 196 applies and Price + Neal applies as a state has the NIL. Price + Neal is strictly C.L.

So. Boston Trust Co. v. Levin (p. 454)

D^ee v. Cash receiver (H.I.D.C.) in Rest. for money had + rec'd. and on the indorsement for br/warranty.

Under NIL, the D^ee bank is not a holder in due course + cannot ∴ recover for br/warr. since the warranties run only to a HIDC.

Ct. held that D was not liable but that the basis of the decision was not the NIL 62 but was C.L. via §196. So, as far as Mass. was concerned Price + Neal — a D^ee is deemed to know the D^er's true signature —

applied. - This was pre-U.C.C.

Quaere: What else is D^ee deemed to know? ?=D^ee is deemed to know also the correctness of the deposit and the correctness of the books kept by D^ee.

Liberty Trust Co. v. Haggerty (p.451)

Pymt. of a ✓ by a D^ee bank, under the mistaken belief that the D^er had suf. funds to his credit to pay the ✓, is a finality and the bank cannot recover from the payee of the check the amt. so paid.

(The raising of an instru. is equiv. to a forged drawing.)

Timbel v. Garfield Nat. Bank (p.459)

See p.460 for rules of law.

D^ee v. D^er for recrediting. T/D because D^er negl. prepared the instru. by leaving suf. space for ~~fraud~~ raising.

Quaere: Can holder proceed against D^er in this kind of situation for negl. of D^er? ?=See 3-406: negl. of D^er precludes recrediting from D^ee, and an innocent HIDC can recover from D^er for D^er's negligence.

25 Nov. 59

Basch v. Bank of Amer. Nat. Trust + Sav. Assn. (p.463)

The defense was negl. D^er v. D^ee for re-crediting of D^er's account.

In a suit brought by P-customer against his D^ee-bank for re-crediting of D^er's (P's) acct., as a cond. precedent to the defense of negl.,

It is also reas. to require of the bank the estab. of its own freedom from negl. as a prerequisite cond. to asserting ESTOPPEL by conduct in defeat of the depositor's claim.

In this circumstance the burden is upon the bank to show via defense that the depositor was negl. and that the bank was free from negl.

"EXAM"

of D^ee as alleged by D^ee, D^ee must carry the burden / proof re its own due care.

D^ee made mistake here + failed to carry its B/P: put clerk on stand + clerk made harmful admissions.

Under the *Code, the result would have been the other way. 4-406 eliminates requirement that D^ee carry B/P re the D^ee's due care as a cond. precedent to the assertion by D^ee of D^or's negl.

"Crucial:" the diff. between ~~the~~ legal effects of forgery of D^er's signature and of P^ee's or In^ee's signature. Note that Price + Neal applies only to denial of rest. to the D^ee in that type of case against the cash receiver.

*Sec. 21 CERTIFICATION AND BOOK TRANSFER *

Anytime a corp's. valid signature appears on the books whether made by fraud or mistake a HIDC will not be penalized. The same result as a fictitious P^ee on a bill.

Quaere: What about forgery?

In a bill or note, a P^ee whose name is forged is not divested

of his title by trans. to any subsequent taker. Same as on a SC.

Since SCs don't come under N.I.L., the question of bank being a holder is absent.

[Under a SC which is forged (forged drawing), the bank could bring br/warr. as here the problem of a HIDC is not present.]

The forgery victim has no action in conversion against a transfer agent on a SC on " " issues new cert. ("clean cert.") for the forged one, as an action of conversion lies only for that specific prop. wh was converted, & exchanger has a new one.

Trans. agent v. exchanger – can be in either tort or by warranty.

Quaere: The Pl can sue whom for what?

On Pl & BFP are both entitled to the SC, both of course can't have it, so one will have to settle for money. Wh one will have to take the money? Not definite. The **U.C.C.** suggests that the "1st in time" rule would not apply but that the second would take the SC. Q. On in the UCC is this suggestion found?

Wells Fargo Bank + Union Trust Co. v. Bank of Italy (p. 470)

A suit in Rest. by D^ee on an altered P^ee's name. Under * Nat. Park Bank v. Seaboard Bank, a D^ee bank cannot sue the presenting bank in Rest. because the latter is deemed to guar. all prior indorsements.

Quaere: Why wouldn't that case apply here? D^ee bank had cert. ✓ here after alteration. The Nat. Park does not apply due to N.I.L. wh spec. provides for the engagements of Acceptor - D^ee. See secs. 62 and 132. Case here decided on basis of 62, one of only two Amer. cases so decided.

Note: Steffen uses minority opinion (Wells Fargo Case) to show that as far as a bill and SC are concerned, the code is the majority opinion and.

Nov. 30, 1959

West v. Tintic Standard Mining Co. (p. 476)

Owner v. Issuer to recover stock. Third party stole P's stock forged P's ind. and had it trans. on books of the corp. P had entrusted the blank ind. cert. to her atty., the thief. He made the blank ind. a different kind of ind. (Restrictive) ← (If it had been a special ind, P would have won.)

Thief thought it was a spec. ind.; so did transfer agent. But the word "trustee" after his name showed that he was acting for P. Thus, it was a restrictive ind.
No K between D^{d} & P^{d}. (Blank ind. has same effect on cert. as on a bill or note: thief can pass title).
P could proceed against trans. agent for market value of certs. in Conversion.
Eq. could give relief: protection of prop. rights.
Thief here exchanged cert. for 3 new certs. of equivalent value. The new holders are joined w/ defendent.
Trans. agent defended that P was estopped from bringing Conversion, but D was not a BFP for value. The two elements of estoppel are present due to the entrustment and blank ind. wh gave atty. power to make a disposition. D not a BFP here because the ind. const. notice.
The holders are liab. for Conversion to P because they are exer. dominion over P's prop. & P still owns it. Trans. agent could have br/warr. against holder who exchanges certs. for

Br/Warr.

new ones. Altho', under NIL, D^e would have no action for br/warr. against cash receiver because D^e cannot y be a BFP, in stock certs. an issuer could have br/warr. against the exchanger of certs. N.I.L. doesn't apply to S.C.

"Trustee" made this a restrictive ind. (true also under Code). Any ind. wh. advertises that the owner is reserving title, is a R.I.

Rest. ind. br/warr. can lie against the exchanger.

CONVERSION by Owner

Before the Code, anybody who touched it under the impression that he owned it, would be liab. to the orig. owner in conversion on the certs. are exchanged for clean certs.

After clean certs., the first transferee from the exchanger would not be liab. for Conversion to T.O. because he has clean certs.

Code: Under the Code, even the exchanger of clean certs. is not liab. in conver. to the owner if he is BFP. 8-306. Further, since this implies that exchanger has title, br/warr. by transfer agent against exchanger would not lie. So, the test whether

NO

exchanger is a BFP (under Code).
No br/warr. of title if he is BFP.
Quaere: Would trans. agent be able to
RESTITUTION: recover against exchanger
in Rest.?: = Before Code under S.T.A.,
yes. (For Rest. to lie on mut.
mistake, the fact as to wh mis-
take is made must be ma-
terial.) The Code seems to be
quiet re Rest. Thus, the
risk is run that since
Rest. was not eliminated
along w/ br/warr., the
argument could be made
that Rest. was not intended
to be ~~made~~ eliminated.

U.S. Fidelity + Guar. Co. v. Newburger (p.483)
Bond was stolen from messenger.
Payee's name erased +
forged name inserted. Subse-
quent holder, D, was sued
by owner's insurance co. (i.e.,
owner) after D (BFP) got
clean certs. from the trans.
agent.
⊛ If this were a Bill/Ex.,
D would be liab. for innocent
conversion. But, D was held
not liab. for conversion. ⊛ So, the
innocent converter of a
~~[illegible]~~ S.C. is not liab.
in Conversion to the owner.
Thus greater protection here on
stock certs. than on bills.

NO CLASS 12-2-59.

3 Dec. 59

SEC. 24 PAYMENT BY DRAFT

Bank collection process —
P^ee deposits ✓ w/ BK-1 drawn on BK-3. BK-3 pays ✓ to BK-2 wh BK-2 pays BK-1, and the credit given to depositor orig. is made good. BK-2 is the presenting bank.

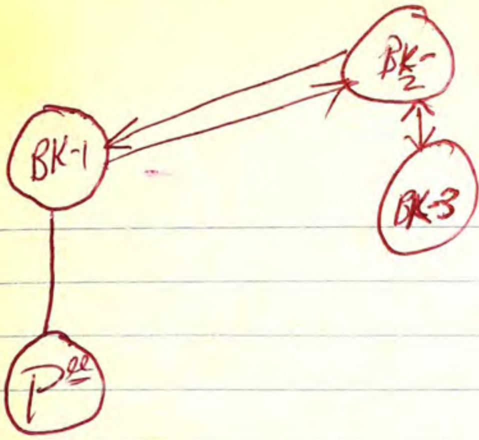
The problem arises when BK-3 gives BK-2 a draft instead of cash or currency.

If "pymt." has been made to BK-2, (draft = pymt.) the P^ee could have no action against BK-2 (assume BK-3 fails) because the ✓ has been paid as that word should be defined.

Quaere: Could P^ee sue D^er if we assume that the draft = pymt. (under NIL 51)? No. D^er liable only upon dishonor and draft = pymt and pymt. = honor (assuming that the draft = pymt.)

After the draft is given to BK-2, assuming draft = pymt., ∴ would be nothing in D^er's account w/ D^ee-BK#3 because pymt. would mean that the funds of D^er have been applied.

For BK-1 to avoid liab. if we assume that draft = pymt.



y must be a special agreement ro/ P^ee that credit is given to the P^ee - depositor conditionally and that only cash would const. actual pymt.

Most bu. now done by draft in this situation today.

Stop order by D^ER

[If BK-3 → draft to BK-2 and BK-3 remains good and solvent, and D^ee then sends stop order to BK-3 (D^ee), too late if we assume draft = pymt.

BK-1 usually takes ✓ from P^ee - depositor as depositor's agent for collection.

If P^ee instructed BK-1, or BK-1 instructs BK#2 - presenter to get certification from BK-3, no difference if BK-3 fails.

The legal problem is whether the giving of the draft constitutes pymt.

(p.538) FED. Reserve BK. of Richmond v. Malloy

P^ee v. presenting bank (#2) in tort for negl., alleging Ɗ was negl. in accepting a draft from BK-3 when money could have been gotten as BK-3 had the money on hand.

Under N.I.L. - draft does not equal pymt. anytime.
Under U.C.C. - draft = pymt.

U.C.C. 4-202(3) - in point.
U.C.C. 4-211 (1) - a draft would be pymt. Also, cashier's ✓ of D^ee itself, money, "a ✓ of (BK-3) or of another bank on any bank except (BK-3)." Seldom is pymt. made by a ✓ of another bank drawn on BK-3.

Here, court decided that the draft did not const. pymt. - Old Rule.

D's argument re custom wh. constituted a draft as pymt., was refuted by ct. because

CUSTOM

custom, to be accepted, must be a uniform and definitely estab. mode of operation, and must have the effect of compulsion so that persons would feel it necessary to comply.

McGoldrick Lumber Co. v. Farmers etc. (p. 543)

P^ee v. D^ee; D^ee alleges pymt. J/P^ee /A. Thus, Ct. said that this was not pymt.

— Cts. are split ½ on this. Code says that the giving of a draft is pymt. for absolutely all purposes.

For policy reasons and for the protection of at least certain of the parties (esp. BK-2), it could be argued that draft should equal pymt. for some purposes.

7 Dec. 59

Due Course Purchase & Pymt.

Sec. 26 In Good Faith & W/o Notice

If the instru. is negot. and has been negot to a H.I.D.C., then and only then will the taker be entitled to the extraordinary protection of law merchant. All three questions must be answered yes:

(1.) Was the instru. negot.?
(2.) Was " " properly negot. to him?
(3.) Was he (the taker) a HIDC?

N.I.L. 52, 26 (what const. holder for value).

Swift v. Tyson

Value is paid when an antecedent debt is satisfied. Y need not be a passing of money.

Art. IV of the N.I.L. re Rights of the Holder.

Y is considerable author, wh. says an instru. w/o payee filled in is bearer.

Regardless of type of N.I., absence of date on the instru. shows that the instru. is not "complete and regular upon its face" and that would not allow

a taker to be a H.I.D.C. under NIL 52.
The crucial time is the time of transfer. HYPO: A gets w/o date → B → C, C fills in date → D. D is the only H.I.D.C.

Five Requirements under NIL 52:
(1.) Complete and regular upon its face
(2.) Became holder before it was overdue
(3.) In good faith and (4.) for value.
— Also, that he took it w/o notice of any infirmity in the instru or defect in the title of the person negotiating it.

FAMOUS CASE

Gill v. Cubit (p. 586)

Objective standard, and Holder must prove his good faith.

Indorsee v. acceptor. D alleged no title because P got it from a thief. D wants to show P to be a mere assignee, and ∴ subject to all defenses open against the assignor. D alleges that P was not a HIDC because good faith of P was lacking.

The issue revolved around what test or standard would be used to determine when a taker of an instru. takes in good faith: subjective test, or objective test.

P appealed from the charge to the jury wh. implied that the B/P was on the holder

and that the B/P re P's good faith is on the P-holder. Only instruction wh actually makes the jury decide the B/P per se, can be disputed. Q. So, what's the standard and who has the B/P? = Both questions were decided adversely to P: subjective stand and B/P on P as to his good faith. — This was for a long time the rule, esp. in England.

OLD ENGLISH RULE

Murray v. Lardner (p. 589)

Action in conversion by owner against holder. Trial Judge's charge was like the Gill Case. The Sup. Ct. said that the test is subjective. But, the real holding was in re to whether the charge that the holder had the B/P his own good faith. Ct. said that the P has the B/P re the holder's bad faith, and the test is subjective. So, the party alleging lack of good faith of the holder has the B/P on that issue.

10 Dec. 59

Quaere: Will the test be obj. or subj.? =

Murray Case even said that holder had no duty to inquire.

Gersta Corp. v. Wessex-Campbell Silk Co. (p. 593)
Holder v. Acceptor on a trade acceptance.
what biz is P in? = Bill broker or w/ discount paper. - May be important. D alleged failure of consideration.

EXAM

[Note: the status of Ass^ee on a non-negot. bill may often still be suff. for Ass^ee to win. On exam, don't just say "it is not negot., therefore P cannot prevail." Explore Ass^mt, too. If the defenses that can be asserted against Ass^ee don't defeat the Ass^ee's (P) case, the P will win.

Here, the charge to jury below was objective!
Charge might read: "Gentlemen, I instruct you to find for the D unless the P's evid. convinces you that he knew or should have known that the note he took ~~~~ was not good" (or something like that).
This charge was given at request of D and affirmed on appeal; but, J/P anyway because, even w/ the objective test, he was able to carry the B/P.
This objective standard, altho' minority view, was used because we are not dealing w/ just a widow, but w/ a sophisticated

bill broker, and he is held to a greater standard of care.

CODE

U.C.C. 3-302 — adopts the Gill v. Cubit rule of the subjective standard (Majority rule).
1-201 (25)(c) — looks like Gill case
1-201 (19) — Gill adopted. — But, the code is unclear and could be argued either way.

Mason v. Public Nat. Bank, etc. (p. 596)

Re share certs. Q What standard is used here? ?=
P owned stock, indorsed in blank and pledged it w/ Whitney as collateral for a loan (entrustment + blank ind.). Whitney pledged S.C. to D and then Whitney went insolvent. Action in conversion. (Take your facts sequentially.)

D alleges that, "I own the S.C. and NOT YOU" (means "you don't have title and ∴ cannot bring action in Conversion). * P attacked D on ground that D was not allegedly a Holder in due course because he did not take in good faith.

P

Ct. said that J/D, but it is uncertain wh standard the ct. used. This case could well have been decided on Estoppel, or at least that could have been asserted. In order to so assert, you have to be a HIDC.

Murray Case: a taker is a holder if he is honest himself and he has no duty to inquire. Exception — where the taker—corp. from an indiv. person: it could be a corp. diversion of corp. funds. Applies to all negot. instruments. So, this is an exception to the usual rule of subjective test.

EXCEPTION TO SUBJECTIVE RULE

N.I.L. 59: "Every holder is deemed prima facie to be a HIDC; but when it is shown that the title of any person who has negotiated the instrm. was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as HIDC." Under 59, then, the D alleging that P is not a HIDC has the B/P lack of good faith and lack of the other elements under NIL 52. i.e., the presumption favors holder. But, the burden of going forward falls on P to prove his good faith, etc., when the defendant rebuts the presumption.

(Rebuttable presump.)

(Burden of going for.)

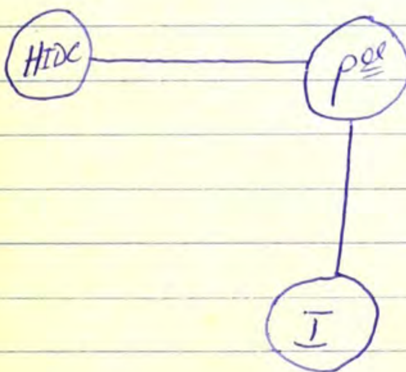
14 DEC. 59

SEC. 27 BEFORE OVERDUE OR STALE

The HIDC may have one of two opponents.

the maker, or the payee. On the opponent is the issuer, it's an eq. of defense situation; on opponent = payee, eq. of ownership.

Even under the N.I.L., a purchaser of overdue paper may be half of a HIDC, i.e., taking free of one of the two equities, but not free of the other. There are two equities: eq. of defense and eq. of ownership.



Brown v. Daviss (p. 609)

Pe (holder) v. Maker on a time P.N. D alleges pymt. If P is a HIDC, the defenses that D could have asserted against Pee could not be asserted against P. So, D is alleging that P is not a HIDC because he took w/ notice as the note was overdue. If so, P would be open not only to the defense of pymt., but to all equities of defense. J/P/R.

HODGE v. Wallace (p. 612)

Holder v. Maker on a time P.N. P bought an overdue note. D alleges that P bought w/ notice of overdue nature of the note. D contends that due to the acceleration clause the note became due and overdue before P bought the note.

Ct. held that the paper became overdue by virtue of the acceleration clause and, ∴ P was not a HIDC. However, J/P even

(p.

So,
own
def

as because even tho' P was a mere As^ee, his status as an As^ee was still good enough to win.

(p.617) Kintyre Farmer's Co-Op. Elevator Co. v. Midland Nat. Bank

In^ee - holder v. Maker on a demand P.N. Under N.I.L. 193, a reas. time's lapse will make a demand note overdue. The yardstick will vary depending on the facts of the case.

Code: — Under Code, 30 days allowed for this purpose. (Differentiate

Caveat [between this and the S/L and presentment time limitations)

Even tho' holder not a HIDC, can't sue P^ee under N.I.L. 66 because he's not a HIDC. But, under N.I.L. 7(2), holder could sue the P^ee when the P^ee is a post-maturity indorser, and as to the P^ee, the note becomes a demand note, and holder would be HIDC as to the post-maturity indorser. But, as to the maker, the holder would not be a HIDC. ~~Under the~~ (Idaho State Bank v. Hooper Sugar Co., p.620).

So, holder takes free of eq. of ownership but not of eq. of defense.

Code: Under the Code, allegedly the holder could not go against the P^ee.

Gardner v. Beacon Trust Co. (p.626)

P^ee v. holder. D took note secured by a mtge. wh, when D took, had been defaulted. P is asserting his eq. of ownership.

Due to N.I.L. 58 note should be treated as non-negot. However, on

American Rule

the eq. of ownership could be asserted against the P^ee under C.L. principles, the holder could allege estoppel and take free of eq. of ownership even tho' he may be subject to the equities of defense. So, for one purpose, holder may be called "HIDC" but not for another.

The prevailing * Amer. Rule is to treat the overdue bill as an ord. chattel (e.g., chair), and allow the holder to assert estoppel.

"Presentment for pymt. is not necessary in order to charge the person primarily liable on the instru." (Refers to a P.N.) Sec. 70 of N.I.L.

The * English view is that the taker would be subject to the equities of defense (as in America) AND the equities of ownership (not in America). i.e., he would be in worse shape than if he had bought a chair.

Ex Parte Oriental Commercial Bank (p. 624)

P = the principal w/ whose money their agent fraudulently bought bills. The agent discounted the bills w/ D after they became due. J/P on the mechanical application of the rule that a taker of an overdue bill is w/ notice and is ∴ not a HIDC, & ∴ takes

subject to ~~the~~ all equities. English Rule

P was not on the bill. He was a remitter; thus, his equity of ownership was a LATENT EQUITY.

CODE: Re U.C.C., the requirement that the note be taken before overdue, upon pain of disqual. from due course status, is eliminated. 3-302 says "w/o notice." If you don't have notice of the overdueness, you still take in due course.

Quaere: Is 3-414 like N.I.L. 7, making the post-maturity indorser liable to the indorsee? = Liberman feels yes. (According to tenor of instru. at time of acceptance)

Note: N.I.L. 71 does not apply to a P.N. because a P.N. is on a par w/ a B/E.

16 DEC. 59

Sec. 29 AND FOR VALUE

Discrepancy [When the discrepancy between the face value of an instru. and the amt. actually tendered is apparent & waves a flag, the good faith requirement might be in question.

Quaere: Is the taking of pymt. in return for an antecedent debt a ~~pymt.~~ taking of payment for value? = Sec. 25 N.I.L. says yes. And, value in §25 is the same talked about in Sec. 52.

Of course, pymt. of money is pymt. of value.

against Taking the instru. as security Contingent liability: if it is a contingent liab. already incurred, no value because y has been no "consid. suff. to support a simple K," §25, because past consid. is no consid. If it is a contingent liab. which has not yet been incurred, what then? N.I.L. Silent; Code says yes.

Swift v. Tyson (p. 653)

Ind^ee (holder) v. Acceptor. D alleges that the consid. failed as between himself and the drawers who induced him to accept, and that P did not pay value because he took for an antecedent debt, and that an antecedent debt is not enuf to qualify a taker for H.IDC status.

Ct. held for P, saying that

NIL 25 an antecedent debt is suff. to satisfy the value requirement, and can qualify a taker for HIDC status.

The majority view at C.L. was that the taking of an instru. as security for contingent liability was not a taking for value.

N.I.L. 25 codifies Swift v. Tyson.

3-303(b) Quaere: Suppose you're taking an instru. as security for an antecedent debt? = N.I.L. is silent here, but it is "for value" under the Code 3-303 (b).

Erie R.R. v. Tompkins did not overrule Swift. The concept of the autonomy of the fed. ct. was rejected by Erie, and that concept was not the holding in Swift anyway. The holding was re antecedent debt = value. The rule re what law governs of Erie R.R. Co. Case applies only on the basis of juris. is diversity of citizenship.

So, there are three things that const. value:

(1.) Money,
(2.) Antecedent debt, and
(3.) Taking the instru. as security (Code)

17 DEC. 59

Dresser v. Mo. + Iowa Ry. Const. Co. (p. 657)

Indee v. Issuer. D alleges to assert a personal defenses against P wh could only be asserted successfully if P is not a HIDC. The time P.Ns. were for $10G face value and P paid $500.00 down. D is alleging that P is not a HIDC because he's not a taker for value and he had not paid value before he (P) rec'd. notice of defect in his transferor's title. So, D is alleging that a taker must pay full value ~~or promise~~ promised to pay before notice is rec'd. The ct. held for P, saying that one can be a HIDC for so much of the value paid before

notice is rec'd. See N.I.L. 54: pro tanto holder in due course.

On exam, go thru H.I.D.C. elements one by one so that you don't skip any and ∴ skip some points.

(*) Code pro tanto — 3-303(a) not applicable because the NIL discussion of notice is not found in the Code. Nothing depends on notice. Nor does subsec. (b) have direct pertinence.

Pennoyer v. Dubois State Bank (p.666)
P (bank) gave cert. of deposit. D says that was not the giving of value because the cert. amounted to a promise to pay and not pymt. Under the N.I.L. §25, the cert. would be value because it would be "consid. suff. to support a simple K." However, between the making of the promise and the " " pymt., P got notice and then paid 100% of the value. D argued that P should be a pro tanto HIDC up to the time of receiving notice — a HIDC to the extent of Nothing. Ct. found for P-holder. Ct said that he would be at a loss to get back the certs. because they could be transferred to a

taker who ~~[illegible]~~ would be HIDC as to P.

*Code 3-303(c) codified this case.

Griswold v. Morrison (p. 662)

P got the note before he got notice. P was an accommodation indorser, and P had to pay and paid after notice was paid. So, P v. D-issuer.

RULE [A person is a HIDC at the time he takes, and that is the crucial time.

P took the note as pymt. for an antecedent debt and as security for contingent liab. on the note. The value totally = $800+, and that discrepancy from $1/6 is not a flag waver.

Ct. found that he is a pro-tanto HIDC to the extent of the value paid — $800+.

*Under U.C.C. 3-303(a) — "agreed consid." — it could be argued that the P was entitled to the full face value of the instru. rather than the value paid.

4 JAN, 60

Re prin. features of value — past consid. is O.K. under N.I.L. and Code. Taking for security of past debt or past contingent liab. is O.K.

Bach v. Bank of

In^ee v. In^or. Refer. to br/warr. action. Warr

runs only to a HIDC. Why? Value was paid here. In [illegible] bank had sold all assets of X for small amt. of $, but value paid was greatly under value of note. P here satis. elements of HIDC of §52. This suggests a sleeping element absent from 52 - he did not obtain it in the ord. course of biz. Code picks this up. At law merchant, there was one rule — to get HIDC status, you must come by the instru. "in the ord. course of biz."

What if 52 is satis. but "ord. course of biz" is not satis.?

This ct. said that P did not get a HIDC status.

Code changes this: 3-302 (3) - a HIDC will be found only one obtained in ord. course of biz, ~~judicial sale or estate buying~~.

Sec. 30 — COMPLETE AND REGULAR ON ITS FACE

2 problems: (1.) NIL 52 says to be a HIDC, y must be an instru. complete + reg. on its face. To be complete, it must be filled in. *What if Pee's name is omitted? You could say it's payable to bearer. So, it could be a complete bearer instru.

If Der's name omitted, not an instru. at all.

If Dee's name omitted, could be a P/N.

So, we narrow down to

1st problem: is taker of incomplete instru. a HIDC?

2nd problem: if finder fills in blanks, does D^er have a defense?

Quaere: What if finder found ✓ of X w/ his (X's) signature as D^er, filled in blanks, + it got to a HIDC.

Instru. must be complete + reg. on its face upon delivery. Crucial time is the time of delivery for taker to be a HIDC.

Quaere: Suppose instru. payable to X is w/o date? X fills in date + then gives it to Z. Q. Does Z take it complete + reg. upon its face?? = Yes. But, if Z had seen X put in date, may be chance that Z had notice of infirmity. * But, if Z did not see X fill in date but knew X had changed the date, still got instru. complete + reg. upon its face.

Mechanics v. Schegler

Maker's note indorsed. Not dated so given back to maker. Maker filled in date and → to P-holder.

Quaere: Can H who sues indorser be said not to be a HIDC?? = When H took it, everything had been filled in, so he prevailed.

Benson v. H

Good old C.L. view. Suit between Holder + maker. Maker's defense was no delivery, ∴ note had never come into exist. P was a HIDC. A HIDC cannot prevail in case of forgery (a real defense).

Other real defs. — non-delivery alone makes for a real defense = C.L. View. * Under N.I.L. 16, all prior deliveries are conclusively presumed.

Baxendale v. Bennett

A note w/o Der's name stolen from drawer. Dee's name filled in. Def. of non-del. no good.

Quaere: How can this case be resolved w/ Benson case? = In both, an issuer was sued by a HIDC. In Benson case, def. of non-del. was upheld. Same defense in this case, but instru. was also incomplete here. Under N.I.L. 16, this case would see P prevail if failure of del. was only def. But, y was also an incomplete instru. here so D prevailed.

N.I.L. 15 codified this case: non-del. of an incomplete instru. ~~is~~ a real defense.

Code: eliminates even this defense.

Code

Paper whose contents are incomplete when signed is effective when completed and completion is authorized. If completion is author., rules of material alteration apply even if no delivery. U.C.C. 3-407. A subsequent holder may enforce the instru. (even w/o completeness or delivery) according to its tenor at the time he got it.

Trust Co. Case v.

Suppose you have a ✓ wh is incomplete & not delivered. Under N.I.L. — D^er has a real def. But, what if D^ee - bank pays ✓. Does D^er have recourse against bank? — Tough case.
A reas. action if D^er decided to go against HIDC = restitution.

6 JAN. 60

* Elements of HIDC under §52 of NIL.
(1.) In good faith
(2.) before overdue (and w/o notice of dishonor previously, if any.
(3.) Paying value
(4.) Complete and regular on its face.
(5.) No notice of infirmity in the instru, or defect in title of person negotiating it.

* Code 3-302 —
(1.) In good faith
(2.) Pay value
(3.) Overdue — not automatic as under N.I.L. Disqual. only if taker has notice it is overdue or has been dishonored.
(4.) Incompleteness — will disqual. only if "the instru. is so incomplete" as to const. notice.

So, under the Code, elements 3 + 4 are reduced to a notice basis.

* SEC. 31 PAYEE AS HIDC. *
Under Eng. decisions, P^ee not HIDC because P^ee is not a negotiatee

and negotiation required under Bill of Ex. Act. ⊛ Another rationale is that the P^ee could not satisfy the good faith requirement because he (P^ee) would be an immediate party to the defect or fraud, if such exists.

But, on the P^ee is insulated by another person — e.g., a remitter — from privity of issuer. On such is the case, a P^ee could be a HIDC + satis. the good faith requirmt.

Boston Steel & Iron Co. v. Steuer p. 699

Stands for: P^ee can be a HIDC.

W gave H two checks to pay W's bills. H paid his bills. H filled in amt. in presence of P as being in discharge of his debt.

Now P v. D in K for the orig. debt. D alleges pymt. Did P take instrn. as HIDC, i.e. free from def. of pymt. (not good case because pymt. not good defense in K action) on one instru. wh was already filled in. On the other one wh H filled in in P's presence, ct. said P took in good faith.

D should lose this case on basis of estoppel; i.e. was

{ * ON EXAM, CONSIDER ALL POSSIBLE THEORIES OF RECOVERY.

entrustment + some author. to make some disposition.

Ex Parte Goldberg + Lewis (p. 706)

Pee v. Surety on instru. (co-maker). D alleges fraudulent inducement by the maker to get D-co-maker to become surety-indorser of note.

So, if P is HIDC, he takes free of def. of fraud. D argued that the P was not one to whom the instru. was **negotiated** (52 (4)). P argues that it is not a requirement that y be a negot. because y was an omission (cassus omissus : case omitted) of definition of negot. in statute, that ∴ the law merchant governed per §196. This would admit case law wh. had no requirement of "negot." Another way would be to argue that "negot." means negot. from AND TO the Pee.

* In Code - a Pee may be a HIDC 3-302 (2). Also means a Pee may not be a HIDC, esp. on the Pee is in privy w/ the maker and would not ∴ satisfy the good faith requirement.

R. E. Jones v. Waring + Gillow Ltd. (p. 710)

Issuer v. Pee in Restitution for money paid under mutual mistake (as to

the consid. for the instru.).

Good case for estoppel to hold for D. But, majority of ct. held that there was no estoppel (erroneously).

Ct. held that T/P because D took subject to defense of no consid. because he was not a HIDC. Ct said a Pee cannot be a HIDC merely because he was a Pee. + The English View.

*Sec. 58 of N.I.L. = like Doctrine of Shelter (ref BFP in Prop. law).
(1) Must take from HIDC
(2) Must not be a party himself to the fraud or illegality.

Consider doctrine of reacquisition - not protected by 58 - and how it has been altered by Code 3-201.

7 JAN. 60

Sec. 32 REACQUISITION

Altho' X may not be a HIDC, if he meets 58 and comes under shelter doctrine, he has the rights of a HIDC.

But, altho' the rule of reacquisition is the same, if the reacquirer was not orig. a HIDC or was a party to some illegality or fraud, the reacquirer cannot be a HIDC. This is

the rule under NIL.

Under Code, same rule except that the reins are more tightly drawn. If the reacquirer even had notice, he cannot be a holder w/ due course status. 3-201(1). Re investment paper, 8-301.

Lill v. Gleason p. 724

Ind^er reacquires. Here, accommodation Ind^er for the payee had to pay due to default, and now that acc. Ind^er (P) v. maker. D alleges fraud wh D had as a def. against P^ee.

Under N.I.L., P prevails because he was a holder who derived his title thru a HIDC.

~~[illegible]~~ An Ind^er who has to pay is remitted to his former rights. Since the acc. Ind^er had no holder status, he was remitted to zero. This was Mass. rule under N.I.L. The Code rejects this: 3-415(5).

Gruntal v. Nat. Security Co. p. 732

Under N.Y. Stock Exchange, a broker who sells a stolen bond must get it back from the purchaser and give purchaser a good one. On this happens, what status does the broker have in re the stolen bond in broker's poss.? — The element of "value paid" is lacking, so broker is not a HIDC. But, when he reacquires the bond from the purchaser, he has seemingly achieved HIDC ~~[illegible]~~ rights if the purchaser was a HIDC. But, when broker gives purchaser a good

bond, broker is merely giving purchaser that to wh he was entitled.

Now, as between the T.O. and the broker, who owns stolen bond? Remember, usually T.O. will demand and get a new bond from corp., but corp. will require T.O. to indemnify the corp. — If broker wins, everyone will be set right.

What argument would be made by T.O. to preclude broker from coming under shelter doctrine upon reacquisition? That broker was a converter and ∴ was a "party to the fraud or illegality. But, the conversion rule has an exception which is pertinent: on a **BROKER**, innocently sells a bond or other investment paper, wh is stolen for someone else, the broker is not a converter.

So, under this exception, the broker would not be a party to the fraud or illegality (recognizing but not admitting the argument that a converter is a party to the fraud or illegality) and would, **upon** reacquisition, get HIDC rights if the party from whom reacquisition is made was a HIDC.

The exception is to the gen. rule providing for conversion of chattels and negot. instrs.

The exception applies only to negot. securities and stock brokers.

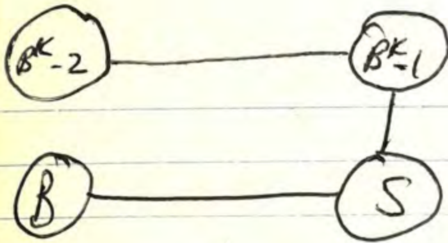
Three ways to get due course rights under the N.I.L.:
1. where you acquire as HIDC.
2. " " " thru HIDC
3. " " reacquire thru HIDC
on you were not a party to ~~the~~ any fraud or illegality affecting the instru. [Under the Code, 8-301, the notice requirement applies only on if was notice "as a prior holder."

11 JAN. ~~19~~60

SEC. 34 THE DISCOUNT TRANSACTION

If seller (Boston) sells to buyer (Chicago), ~~[illegible]~~ RR. will ~~give~~ seller a Bill of Lading - a negot. instru wh is also a receipt. A document of title (Art. 7 of Code). S will draft a trade acceptance on buyer (D= thereof) and discount both the B of L. + T/A w/ Bank-1. Bank-1 will send both to B^k-2 in Chicago. B^k-2 will notify Buyer that he can't get the goods unless he gets the two instruments. So, buyer pays B^k-2 and then gets the goods from the R.R.

Upon discount by Bank-1, S is



credited w/ that amt. (minus a nominal charge for discount) so that S had gotten his money already.

If the goods are damaged or spoiled, B will want to sue S for br/K, and will want to garnish Bank-2 on the grounds that Bank-2 is holding property of S. So, S will want to allege that title passed to Bank-1 upon discount and that ∴ S has no title and is not liable as a party. So, does discount = negotiation (w/ passes title.

Vickers v. Mach. Warehouse & Sales Co. p. 765

Even tho' Bank-1 had a right of charge-back, that, alone, would not stop Bank-1 from being a purchaser of the instruments. Equated w/ rights of Indee who gets title but still may go against his Indor upon dishonor.

So, J/D (S) on grounds that D had no title, but that the title was in Bank-1.

Would Bank-1 be a HDC? Did S give value when discounting?

Bishop & Co., Inc. v. Midland Bank p. 777

Can buyer sue bank-1? How could he under K law if Bank-1 was not a party to

the K. So, buyer alleges that when Bank-1 took the T/A and B of L from seller, he took an assign from seller since the B of L embodies the K. (The K action is for br/warr. But, under the Fed. B of L Act, one who takes the B of L for security and indorses does not warrant anything. The security is against seller's insolvency so that it will be protected where it has to charge-back and seller is insolvent.) Buyer could not ∴ sue Bank-1 under any theory, not even Restitution.

So, altho' buyer could not have Garnishment (an ancillary action) against seller, an action in K could be brought against seller.

Better to bring an action on the instru under law merchant law:
1. Don't have to ~~allege~~ plead + prove consid.
2. Dams. fixed by face value of the instru.

If under K law:
1. Must plead + prove consid.
2. Dams. depend on K law of dams.

Under 3-805 = means that the

holder does not have HIDC rights but need not plead nor prove consid and the dams. are per face value of instru.

Sec. 35. The "VIRTUAL" ACCEPTANCE

Letter of Credit – promise to accept drafts. Is it the same as an acceptance.

Promise made by buyer's bank in Chicago to seller in Boston.

Note: in K action on buyer v. seller, buyer will have to serve process ~~of~~ on seller in Boston (hiring Mass. atty.).

Recrediting defenses:
1. Bill was payable to bearer
2. Altho' payable to order, if imposter-payee

Forgeries

I. Forged Ind. on a Bill

A. Under N.I.L.

1. Drr's actions:

a. against Dee for recrediting, but D-Dee can defend w/ estoppel by negl. (of Drr in facilitating the forgery by drawing the instru. negl.), but must first plead & prove its own due care.

b. against forger - nothing

c. Pee - nothing

2. Dee's actions

a. Against forger - Rest. (even under Price v. Neal) in a transaction characterized by fictious act.

b. Against cash receiver - Rest. in a trans. characterized by mut. mistake of fact.

c. Br/warr. would not lie against anyone because Dee not a "holder."

3. Pee's actions

a. Against forger - (just for piece of paper).

b. Against Dee - Conversion

B. Under Code

1. Drr's actions against —

a. Dee - same re recrediting except that re the negl., the Drr must prove his due care and lack of due care of Dee.

2. Dee's actions against —

a. ~~Pee~~ - Cash Receiver ~~within~~ Rest. and br/warr.

b. Forger - Rest. and br/warr. of title

3. Pee's actions ~~against~~ —

a. Dee - Conversion

Wills

Read ch. 10 –

Cases beginning on

409, 410, ~~411~~, 413, ~~414~~, 18, 28, 30, 32, 35, 36, 38, 55, 64, 71, 75.

Tax

Ch 8 – pp. 622 – 639
639 – ~~645~~ + ~~663~~ – 672
pp. 673 – 688

{ Sam Faulise
31 Anderson St. – #6-A

TAX – Ch. 5 Capital Gains

12-2-59	pp. 366 – 382
12-4	pp. 382 – 395
12-8	pp. 395 – 413
12-9	pp. 413 – 428
12-11	pp. 428 – 446

NAME CASES
Kessler v. Valerio
Miller v. Race
Flournoy v. 1st. Nat. Bank
Ward v. Evans
Bank of Canal v. Bank of Albany.
PRICE v. NEAL

1.) When ~~is Dr discharged~~ does acceptance by Dr discharge Dr? — on due date
2.) Can a qual. indorsee proceed against a prior blank indorser who indorsed to the qual. indorser on the instru. (and against Dr upon dishonor)? Yes.
3.) Why is a qual. indorsee "in better shoes" than his qual. indorser? Not so.

B+N

The "Virtual Acceptance" (cont'd.). 13 JAN. 60

N.I.L. - 132 + 135

§132 - Acceptance (not promise to accept)....
§135 - re promise to accept = acceptance.
Must be in writing + signed by the D^ee^.

Banks wh issue promise to accept; is that promise in K (wh requires that you plead + prove consid.) or on that acceptance (on the instru.).

Pillans + Rose v. Van Mierop + Hopkins p. 78
P, in Holland, had extended credit to one White. P went to D and D, White's bankers, promised to honor the draft. Then, D learned of White's insolvency.
D alleged no consid.: past consid. (P had already given the drafts i.e. extended credit to White and then asked D if D would honor them.
Ct. held, however, that a promise between merchants seriously given and accepted is sufi. — This was later overruled. — This type of transaction must be supported by consid. if action is in K.

Dictum: if D had accepted, he would have been an acceptor and liable on the instru.; and that a promise to accept should have the same effect.

Consid. here could be found: D in-

duced P to forebear from an action against White.

If the promise = ord. K promise, action must be in K & defense of consid. may be raised.
If the promise = acceptance, action will be on the acceptance against the Acceptor, and consid. no def.

First Nat. Bank of — v. Rogers-Amundson-Flynn Co. p. 792
Trade acceptance. P is seller's bank — is holding unaccepted draft, against buyer to recover amt. of the trade acceptance. But, this was not really an action on the acceptance: was not in writing. So, this is on the K.
Proceeds were to have been from the sale of the cattle. So, the P was out to get whatever the proceeds of the sale were and they were = to amt. of the trade acceptance.
Here, the discounting bank (P) really was an As^ee of the K. Thus, he was able to bring an action on the K. [Unusual: bank usually won't take an As^mt.]

Snyder & Blankford Co. v. Farmers' Bank of Tifton p. 796
Seller drew drafts on buyer. Seller's bank discounted them. D is buyer and P is seller's bank. D volun. promised to honor all future drafts of seller.
If a promise is cond., regardless of whether on the acceptance or in K, you must first show the meeting of the conds. — Cond. here: "...as in the past."

This was on the K & P alleged & proved consid.

Maurice O'Meara Co. v. Nat. Park Bank p. 802

Refused to honor seller's drafts because the goods were damaged, i.e., Defense of failure of consid. So if this is on law merchant acceptance that defense no good.

The Majority View (Code in accord): D promised to accept the drafts if P were to send along the bill of lading, insurance K, etc. P met the cond.) Once the conditional acceptor's conds. are met, the promise to accept is absolute.

So damaged goods made no diff. here. Nor would it have made any diff. even if the goods had not arrived at all or even if the goods rec'd were not the ones described in the bill of lading.

Sears, Roebuck & Co. v. Rouse Banking Co. p. 807

Buyer bought goods from P. D wrote P that the money to cover the goods was set aside & was no draft here at all. To P: bank has made a promise to pay. (Right back to Mansfield.)

The exculpatory clause in D's promise was held ineffective in this type of situation.

A tremendous invasion into K law.

Art. 5 of U.C.C. - reduces this whole area of letter of acceptance to statute. 5-114 - Codifies O'Meara Case.

5 - 105 : don't need consid to support letter of credit.

Doctrine of anticipatory breach not recog. in Mass. But in this area, it is recog. elsewhere.

Read Art. 5 (Credit = letter of.)