

## CHAPTER 335

## UNIFORM NEGOTIABLE INSTRUMENTS ACT

NOTE: The uniform negotiable instruments act was recommended by the national conference of commissioners on uniform state laws in 1896, and adopted and enacted in Minnesota by L. 1913, c. 272. The act has been adopted by 53 states and territories. It has not been enacted in Vermont. The British parliament adopted an earlier act, later adopted by the British bloc of nations, in 1882. Our present uniform act is being revised and brought up to date by the commercial code committee of the American Law Institute working in conjunction with the commissioners on uniform state laws, and the final draft of the new act will be ready for consideration of state legislatures in 1951.

For Uniform Fiduciaries, Assignments of Accounts Receivable, and Uniform Trust Receipts Acts, see chapters 520, 521 and 522.

For decisions in states other than Minnesota, see Uniform Laws Annotated, Volume 5.

**335.01 DEFINITIONS.**

Comparative law applicable to bills and notes. 1 MLR 10, 117, 239, 320, 401.

Option to pay lower rate of interest as affecting negotiability. 2 MLR 385.

The law merchant and negotiability. 8 MLR 361.

Rights of remitters and other owners not within the tenor of negotiable instruments. 12 MLR 584.

Possession of unendorsed note payable to order as prima facie evidence. 14 MLR 806.

Negotiability of a note payable in foreign money. 19 MLR 700.

Non-payment of interest as dishonoring demand note; liability of accommodation maker to party taking after dishonor. 22 MLR 726.

Interpretation of provisions for attorneys' fees. 23 MLR 219.

Notes payable to the order of the maker. 24 MLR 863.

Unification and present status of negotiability legislation in America. 29 MLR 1.

## FORM AND INTERPRETATION

**335.02 FORM OF NEGOTIABLE INSTRUMENT.**

This action upon a promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from Selover and Mansfield matters" did not give the holder of the note a preference over other creditors of the partnership, and unless these individual defendants held funds of the partnership when issued, there could be no recovery. Parol evidence was admissible to show the meaning of "Selover and Mansfield matters." The evidence is conclusive that neither defendant had or has any such funds. *Selover v Selover*, 201 M 562, 277 NW 205.

The payee of a promissory note who endorses it with an unconditional guaranty of payment becomes absolutely liable to the transferee upon default of the maker without any obligation on the transferee's part to exhaust available legal remedies to collect the note against the maker. A guaranty is absolute and one of payment unless it is by its terms made conditional. *Holbert v Wermerskirchen*, 210 M 119, 297 NW 327.

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 335.025 UNIFORM NEGOTIABLE INSTRUMENTS ACT

798

The negotiability of a note in form negotiable is not destroyed by the fact that when assigned it was attached to a conditional sales contract by a perforation. *First & Lumbermen's Bank v Buchholz*, 220 M 97, 18 NW(2d) 772.

Negotiability of note providing for interest as provided in a certain contract. 1 MLR 516.

Option to pay lower rate of interest as affecting negotiability. 2 MLR 385.

Certificates of deposit; instrument made payable in "current funds" or "currency." 8 MLR 536.

The effect of the "substitute for money" analogy on the law of commercial paper. 14 MLR 335.

Law of warehouse receipts. 15 MLR 292.

Negotiability as affected by acceleration clauses. 16 MLR 302.

Reference to extrinsic agreement as destroying negotiability of bonds. 16 MLR 309.

Negotiability of note payable in foreign money. 19 MLR 700.

Non-payment of interest as dishonoring demand note; liability of accommodation maker to party taking after dishonor. 22 MLR 727.

Interpretation of provisions for attorneys' fees. 23 MLR 219.

Uniform stock transfer act. 23 MLR 484.

Unification and present status of negotiability legislation in America. 29 MLR 1.

Termination of third party beneficiary contracts. 29 MLR 459.

Creditors' remedies relating to negotiable and non-negotiable choses in action and corporate stocks. 30 MLR 616.

### 335.025 CERTAINTY AS TO SUM; WHAT CONSTITUTES.

Under section 335.025 a check is not payable to bearer where it is payable to a fictitious or non-existing payee, unless the drawer knew at the time the check was delivered that the payee was fictitious or non-existent. *Jorgensen v First National*, 217 M 413, 14 NW(2d) 618.

Provision for discount if paid within discount period as affecting negotiability. 14 MLR 807.

Effect of acceleration clauses on negotiability. 16 MLR 302.

Negotiability of note payable in foreign money. 19 MLR 700.

Interpretation of provisions for attorneys' fees. 23 MLR 218.

### 335.03 UNCONDITIONAL PROMISE.

Where a note specifies payment out of a particular fund, the plaintiff has the burden of proving the existence and identification of such fund and may resort to parol evidence for that purpose. *Selover v Selover*, 201 M 562, 277 NW 205.

Reservation of rights in seller as affecting negotiability of note. 15 MLR 108.

Assignment of conditional sales contract and note. 28 MLR 413.

### 335.035 DETERMINABLE FUTURE TIME; WHAT CONSTITUTES.

Effect of acceleration clauses on negotiability. 16 MLR 302.

### 335.04 NEGOTIABLE CHARACTER NOT AFFECTED.

Reference to separate contract as affecting negotiability. 12 MLR 68.

Economic function of promissory notes. 14 MLR 340.

Interpretation of provisions for attorneys' fees. 23 MLR 218.

# MINNESOTA STATUTES 1947 ANNOTATIONS

799

## UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.081

Sale of negotiable instrument by agent without notice that principal is not a bona fide holder. 26 MLR 133.

Creditors' remedies relating to negotiable and non-negotiable choses in action and corporate stocks. 30 MLR 616.

### **335.041 BONDS, NOTES, DEBENTURES, AND PROMISES TO PAY SECURED BY MORTGAGE, DEED OF TRUST, INDENTURE, OR LIEN DEEMED NEGOTIABLE.**

Negotiability of note imparted to mortgage security. 8 MLR 337.

Economic function of promissory notes. 14 MLR 340.

Double hazard of note and mortgage. 16 MLR 123.

Negotiability of elaborate instruments containing collateral undertakings. 26 MLR 653.

### **335.045 VALIDITY AND NEGOTIABILITY NOT AFFECTED, WHEN.**

Consideration as affecting negotiability. 17 MLR 539.

Negotiability of note payable in foreign money. 19 MLR 700.

### **335.051 PAYABLE TO ORDER, WHERE.**

Notes payable to the order of the maker. 24 MLR 861.

### **335.052 PAYABLE TO BEARER, WHEN.**

Forgery of endorsement; instrument issued or endorsed to an imposter. 7 MLR 582.

Rights of remitters and other owners not within tenor of negotiable instruments. 12 MLR 584.

Name of payee not purporting to be that of any person; instrument payable to estate of deceased person. 13 MLR 145.

Fictitious payee; check made payable to one with no interest therein. 13 MLR 501.

Instrument payable to a fictitious payee as bearer paper. 24 MLR 988.

### **335.071 ANTE-DATED AND POST-DATED.**

A promissory note intentionally post-dated or ante-dated, although a valid contract from the time of its delivery, will be construed as it reads, for such is the contract; but the date is only presumptive evidence of the time of its execution. *Almich v Downey*, 45 M 460, 48 NW 197.

A post-dated check is not a "check" which will warrant prosecution based upon there being no funds in the bank to meet it. OAG Dec. 5, 1944 (133b-43).

Statute providing for bodily action against party issuing check without funds does not include post-dated check. 11 MLR 163.

### **335.08 INCOMPLETED INSTRUMENTS.**

Holder of note with blank space or wanting in some particular has prima facie authority to complete the instrument by filling the blank. Consent of the maker of the instrument is presumed. *Moller v Sybilrud*, 180 M 326, 230 NW 812.

Delivery; holder in due course; filling of blanks. 1 MLR 447.

Payee as a holder in due course. 9 MLR 102.

Notes payable to the order of the maker. 24 MLR 862.

### **335.081 INCOMPLETE INSTRUMENT COMPLETED WITHOUT AUTHORITY.**

Liability of signer of a blank check negotiated without authority to holder in due course. 9 MLR 570.

**335.09 DELIVERY; WHEN EFFECTUAL; WHEN PRESUMED.**

To show conditional delivery of a promissory note it is not enough that the maker signed upon the mere agreement of the payee to procure the signature of another. There must be a showing that the understanding was that the note was not to take effect as a contract until the additional signature was procured. *First State Bank v Bratten*, 207 M 477, 292 NW 20.

Delivery; holder in due course; filling of blanks. 1 MLR 447.

Liability of signer of a blank check negotiated without authority to a holder in due course. 9 MLR 570.

Admissibility of parole evidence to prove additional delivery as a defense. 16 MLR 201.

**335.10 CONSTRUCTION OF AMBIGUITIES.**

A note taken in renewal of a prior note secured by a mortgage is presumed to have been accepted as conditional payment only, and the burden is upon one who claims that it discharged and extinguished the original note to prove an expressed or implied agreement to that effect. The mere acceptance of a renewal note, even though it recites a settlement or payment, is only conditional, and does not effect an absolute discharge. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Where neither the creditor nor the debtor has seasonably exercised his power to apply a payment to one of several debts and where one of the debts that has matured is secured by a mortgage on the homestead, the court, as an exception to the general rule, will apply the payment to such mortgage debt on homestead in preference to an unsecured debt. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

In the absence of a specific appropriation of payments by the parties, the court will apply them to the unsecured or least secured debts in preference to those secured or more adequately secured. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Ambiguity as to capacity in which person signed note; when is signer deemed to be an endorser? 20 MLR 818.

Discrepancy between words and figures in amount. 24 MLR 987.

**335.115 SIGNATURE BY AGENT; AUTHORITY; HOW SHOWN.**

Under section 335.115 ratification of an unauthorized signature is equivalent to precedent authority. *Strader v Haley*, 216 M 315, 12 NW(2d) 608.

Signature by procuration; endorsement without authority. 7 MLR 495.  
Doctrine of special agency. 17 MLR 17.

**335.116 AGENT NOT LIABLE, WHERE.**

Personal liability of receivers on negotiable instruments and contracts. 9 MLR 666, 690.

Factor's acts; right to pledge; negotiable documents of title. 12 MLR 633.

Trustee's personal liability on contract. 18 MLR 860.

Interpretation of signature of officer of corporation. 19 MLR 336.

Misrepresentation; situations in which plaintiff is entitled to rely upon the existence of facts as represented. 22 MLR 939, 970.

**335.117 SIGNATURE BY PROCURATION; EFFECT OF.**

Signature by procuration; signing without authority. 7 MLR 495, 508.

**335.12 FORGERY.**

Section 48.29 is not impliedly repealed by the uniform negotiable instruments act. Provisions in a passbook require depositor to examine canceled checks and

# MINNESOTA STATUTES 1947 ANNOTATIONS

801

## UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.134

bank statements and to report errors on discrepancies within ten days is reasonable under the circumstances here disclosed and is binding upon the depositor. *Brunsurck v N.W. National*, 214 M 370, 8 NW(2d) 333.

In an action to recover from a bank for money paid out on a forged endorsement an action in *indebitatus assumpsit* for money had and received will not lie against one who has not been unjustly enriched. *Soderlin v Marquette National*, 214 M 408, 8 NW(2d) 331.

An unauthorized signature not amounting to a forgery as defined by criminal statute may be ratified. *Strader v Haley*, 216 M 315, 12 NW(2d) 608.

Where a check is paid on forged endorsement of payee's name, prompt notice to endorser of drawee's discovery of the forgery is not a condition precedent to drawee's suit to recover amount paid on the check. Negligence of a drawer-drawee in failing to discover fraud prior to a guaranty of the genuineness of prior endorsements does not absolve the guarantor from liability in cases where the prior endorsements have been forged. *National Metropolitan Bank v United States*, 142 F(2d) 474, 65 SCR 354, 323 US 454.

Conflict of laws applicable to bills and notes. 1 MLR 320, 335.

Endorsement without authority. 7 MLR 495.

Signature by procuracy. 7 MLR 508.

Payee's duty to drawee or collecting bank paying check on forged endorsement to notify it of forgeries or irregularities. 14 MLR 170.

Right of drawee to recover amount paid in case of double forgery. 14 MLR 283.

Issuance or endorsement of a check to an imposter. 22 MLR 550.

Acceptance; retention of a forged instrument. 22 MLR 879.

### CONSIDERATION

#### 335.13 PRESUMPTION OF CONSIDERATION.

A stockholder of a corporation asserting that a note and mortgage were executed by it without consideration has the burden of proof. *Erickson v Wells*, 217 M 362, 15 NW(2d) 162, 459.

Want of consideration as a defense, burden of proof. 9 MLR 280.

#### 335.131 VALUE.

In proceedings against decedent's estate on decedent's note, claimant could recover face amount of note under evidence showing that note was given partly for services and partly as a gift and failing to show what part of such amount was a gift, since executor had the burden of proof on the issue. In *re Hore's Estate*, 220 M 365, 19 NW(2d) 783.

A note delivered on purchase of real estate was supported by valid consideration where at the time of delivery maker received from the payee written instrument acknowledging receipt on note in payment for real estate to be conveyed upon its payment. *Kohagen v Joyce*, 221 M 83, 21 NW(2d) 232.

Consideration supplied by re-statement doctrine of promissory estoppel. 22 MLR 891.

#### 335.134. ABSENCE OF CONSIDERATION MATTER OF DEFENSE.

In proceedings against decedent's estate on decedent's note, claimant could recover face amount of note under evidence showing that note was given partly for services and partly as a gift and failing to show what part of such amount was a gift, since executor had the burden of proof on the issue. In *re Hore's Estate*, 220 M 365, 19 NW(2d) 783.

The bank as assignee of auction accounts is liable on vendor's warranties. 7 MLR 164.

## 335.14 UNIFORM NEGOTIABLE INSTRUMENTS ACT

802

Want of consideration as a defense; burden of proof. 9 MLR 280.

Delay in presentment of check; effect, after payment stopped. 17 MLR 320.

Check as a down payment on oral contract to convey land. 30 MLR 647.

### 335.14 ACCOMMODATION PARTY.

Release of accommodation maker by surrender of security. 5 MLR 550.

Accommodation party's liability on note transferred after maturity. 10 MLR 613.

Identifier's liability on signature in blank, possible rules of construction. 13 MLR 313.

Identification of holder and tender of receipt on the counter presentation of facts. 13 MLR 281, 313.

Validity of a note in hands of receiver when given for the accommodation of a bank for illegal purposes under a collateral agreement that the note should never be paid. 14 MLR 79.

Liability of accommodation maker to party taking after dishonor. 22 MLR 727.

## NEGOTIATION

### 335.15 WHAT CONSTITUTES NEGOTIATION.

The negotiability of a note in form negotiable is not destroyed by the fact that when signed it is attached to a conditional sales contract by a perforation. *First Lumberman's Bank v Buchholz*, 220 M 97, 18 NW(2d) 771.

Payee as holder in due course. 6 MLR 156; 9 MLR 101.

Whether giving a bill or note of a third party is payment or security for a debt. 23 MLR 994.

Creditors' remedies relating to negotiable and non-negotiable choses in action and corporate stocks. 30 MLR 616.

### 335.151 ENDORSEMENT, HOW MADE; SUFFICIENCY.

Inasmuch as an unconditional endorsement of a negotiable instrument evidences a contract, makes the endorser a party to the instrument, and imposes upon him contractual obligations, parole evidence is inadmissible to show that the endorsement was intended to be "without recourse"; and where such an endorsement is the only written part of a contract of sale, oral proof of the agreement otherwise cannot go to the extent of nullifying the obligation evidenced by the endorsement. *Johnson v Kempf*, 188 M 109, 246 NW 663.

### 335.153 KINDS OF ENDORSEMENT.

Unless he indicated by appropriate words that he signs in some other capacity a third party who places his signature upon a promissory note before delivery and to give it credit is an endorser. *Sommers v Tintah Mer. Co.* 155 M 107, 192 NW 492.

### 335.162 QUALIFIED ENDORSEMENT.

Plaintiff in a suit against an endorser of a promissory note had a verdict. The issue was as to whether the words "without recourse" were stricken before or after the endorsement and delivery. The evidence though in conflict was sufficient to warrant a verdict in favor of plaintiff. Under the circumstances disclosed by the record, it was not prejudicial error to admit evidence showing that a maker of the note was adjudicated a bankrupt shortly after the transfer of the note." *Keyser v Roberts*, 192 M 588, 257 NW 503.

# MINNESOTA STATUTES 1947 ANNOTATIONS

803

## UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.20

Maker relieved from liability through endorsement upon reissuance of note. 1 MLR 363.

Liability of transferror; effect of an assignment endorsed on back of paper. 16 MLR 703.

### **335.163 CONDITIONAL ENDORSEMENT.**

Reservation of rights in seller as affecting negotiability of note. 15 MLR 108.

### **335.164 ENDORSEMENT OF INSTRUMENT PAYABLE TO BEARER.**

Endorsement upon re-issuance of note; maker released from liability. 1 MLR 364.

Rights of remitters and other owners not within the tenure of negotiable instruments. 12 MLR 584.

### **335.182 DURATION OF NEGOTIABLE CHARACTER.**

Holder in due course; instalment note; transferee after maturity of one or more but less than all of the instalments. 31 MLR 289.

### **335.195 TRANSFER WITHOUT ENDORSEMENT; EFFECT OF.**

Rights of remitters and other owners not within the tenure of negotiable instruments. 12 MLR 584.

Notes payable to the order of the maker. 24 MLR 863.

## RIGHTS OF THE HOLDER

### **335.20 HOLDER MAY SUE.**

In the cases for review it is apparent, both as to the form of the action and the course and theory of the trial, that liability was predicated solely upon an express contract; hence enforcement of liability for unjust enrichment cannot be had. *Swenson v Miller*, 200 M 354, 274 NW 222.

This action upon a promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from Selover & Mansfield matters" did not give the holder of the note a preference over other creditors of the partnership, and unless these individual defendants held funds of the partnership when sued there could be no recovery. The evidence is conclusive that neither defendant had or has any such funds. *Selover v Selover*, 201 M 562, 277 NW 205.

In the absence of any claim of prejudice to debtors, where the note secured by a mortgage provided that at the holder's option and without notice the note and accrued interest should be immediately collectable whenever there was a default in the payment of any instalment of interest, the payee is not subject to the doctrines of waiver or estoppel or barred of the right to accelerate payment because the payee without prior declaration of acceleration waited more than eight months after default before bringing action for personal judgment on the notes. *Phillips v Union Central Life*, 88 F(2d) 188.

What liability for breach of warranty in sale of goods in case of assignment of draft with bill of lading attached. 5 MLR 471.

Rights of remitters. 12 MLR 584.

Payee's duty to drawee or collecting bank paying check on forged endorsement to notify it of forgeries or irregularities. 14 MLR 171.

Creditors' remedies relating to negotiable and non-negotiable choses in action and corporate stocks. 30 MLR 616.

**335.201 HOLDER IN DUE COURSE.**

Knowledge of an executory consideration as distinguished from knowledge of a condition to liability on a negotiable instrument, without any knowledge or chargeable notice of a breach of consideration, does not prevent one from taking it as a holder in due course. *First & Lumbermen's Bank v Buchholz*, 220 M 97, 18 NW(2d) 771.

To be a holder in due course and thereby receive a better title than the endorser of a negotiable instrument the endorsee cannot take with knowledge of the endorser's bad title. *Tolle v Sanford*, 58 F. Supp. 696.

Holder in due course. 1 MLR 446; 6 MLR 406; 9 MLR 101.

Enforcement by a bona fide holder of a note the consideration for which was a transaction in violation of law. 2 MLR 223.

Bank crediting the account of a depositor is not a holder for value. 7 MLR 583.

Dishonoring note by non-payment of interest. 9 MLR 472.

Liability of signer of a blank check negotiated without authority to a holder in due course. 9 MLR 569.

Purchase of series of notes after maturity of one. 15 MLR 585.

Rights of transferee in due course of a check in a foreign country where payee's endorsement was forged and the check cashed by a local bank in good faith. 19 MLR 590.

Notice of infirmity in instrument or defect in title; negligence. 19 MLR 795.

Holder in due course; instalment note; transferee after maturity of one or more but less than all of the instalments. 31 MLR 289.

**335.202 WHEN NOT HOLDER IN DUE COURSE.**

Delay in presentment. 17 MLR 319.

Non-payment of interest as dishonoring a demand note; liability of accommodation maker to party taking after dishonor. 22 MLR 726.

**335.203 NOTICE OF INFIRMITY IN ENDORSEMENT.**

Knowledge imputed to corporation as affecting a director purchasing a note from the corporation. 8 MLR 336.

Payee as a holder in due course. 9 MLR 102.

**335.21 DEFECTIVE TITLE.**

Payee as a holder in due course. 9 MLR 102.

Notes obtained in violation of small loan act; validity in hands of holder in due course. 14 MLR 411.

**335.211 ACTUAL KNOWLEDGE OF INFIRMITY NECESSARY TO CHARGE NOTICE.**

Under section 335.172 the payee of a check whose name is wrongly designated or misspelled has the right to endorse it only where he is the payee to whom the drawer intended it should be payable, and not otherwise. *Jorgensen v First National*, 217 M 413, 14 NW(2d) 618.

Uniform fraudulent conveyance act. 7 MLR 544.

Knowledge imputed to corporation as affecting director in purchasing note from corporation. 8 MLR 336.

Recorded assignment of mortgage as constructive notice to otherwise good faith purchaser of note and mortgage. 8 MLR 347.

Payee as a holder in due course. 9 MLR 102.



# MINNESOTA STATUTES 1947 ANNOTATIONS

805

## UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.23

Negotiability as affected by an act to be performed in the future. 17 MLR 540.  
Notice of infirmity in instrument or defect in title; negligence. 19 MLR 796.

### 335.22 RIGHTS OF HOLDER IN DUE COURSE.

Payee as a holder in due course. 9 MLR 102.

Intoxication of maker of note; defense against bona fide holder. 13 MLR 502.

Notes obtained in violation of small loan act; validity in hands of holder in due course. 14 MLR 411.

Insanity in defense against a bona fide holder. 14 MLR 679.

Possession of unendorsed note payable to order as prima facie evidence of ownership. 14 MLR 806.

Purchase of series of notes after maturity of one. 15 MLR 585.

Effect of delay in presentment of check after payment stopped. 17 MLR 320.

Uniform state transfer act; negotiability of shares; right of subsequent transferee to sue. 23 MLR 490.

Inapplicability of the doctrine of Price v Neal to postal money orders. 25 MLR 516.

Assignment of conditional sales contract and note. 28 MLR 413.

Holder in due course; instalment note; transferee after maturity of one or more but less than all of the instalments. 31 MLR 289.

### 335.222 BURDEN OF PROOF AS TO TITLE.

Where it was shown that a person appearing to be one of the makers of a note received no consideration and was not an accommodation party, plaintiff had the burden of proving himself a holder in due course, and his acquiescence in an instruction that if defendant received no consideration plaintiff could not recover against her made the instruction the law of the case, since it does not conclusively appear that defendant was not entitled to prevail. *Parkin v Sykes*, 203 M 249, 280 NW 849.

The record sustains the court's finding that an assignment by the plaintiff-vendor of a contract for deed to real estate was given to defendant LaBree's assignor as security for the payment of a debt and that the debt had been paid to defendant in a settlement made with him and that he was therefore no longer entitled to the rights of the vendor in the property. *Bishop v LaBree*, 207 M 330, 291 NW 297.

The evidence sustains the finding that the bearer bonds issued for value received by defendant on July 1, 1899, due July 1, 1904, were owned by plaintiffs when presented by them for payment in February 1938. *Batchelder v City of Faribault*, 212 M 251, 3 NW(2d) 778.

Burden of proof as to bona fide holdership; meaning of "burden of proof" as used in the negotiable instrument law. 6 MLR 313.

Payee as a holder in due course. 9 MLR 102.

Possession of unendorsed note payable to order as prima facie evidence of ownership in suit against the maker of the note. 14 MLR 806.

## LIABILITY OF PARTIES

### 335.23 LIABILITY OF MAKER.

A claim on an unconditional guaranty of the payment of principal and interest on a bond at maturity is not a conditional claim against the estate of a deceased guarantor. It is a claim certain in amount and having a fixed maturity. As to bonds not due at the time of the death of the guarantor, it is a claim "not due," and,

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 335.231 UNIFORM NEGOTIABLE INSTRUMENTS ACT

806

as such, must be presented to the probate court for allowance against the estate of the guarantor within the time allowed for the filing of claims, or within the one-year-and-six-months period provided for in section 525.411. *State ex rel v Fosseen*, 192 M 108, 255 NW 816.

Where a promissory note was signed in the lower righthand corner by two makers the evidence sustains the verdict that a third person whose signature was placed on the lefthand corner signed as a witness. *Union Central Life v Flynn*, 196 M 260, 264 NW 786.

Where consignor, as drawer of a draft, under an arrangement, drew drafts upon the consignee as drawee, the proceeds being credited to his personal bank account and commingled with his other bank credits, the relationship between them was that of debtor and creditor, not trustee and beneficiary, and the bank in which the proceeds of the drafts were deposited was not liable to the commission firm for failing to see to it that the depositor properly applied the funds. *Farmers State Bank v Ellingson*, 218 M 411, 16 NW(2d) 320.

Presentment for payment is not necessary in order to charge the estate of the maker of a note in virtue of section 335.27, providing that presentment for payment is not necessary in order to charge persons primarily liable; such presentment is necessary under section 335.282 only in order to charge persons secondarily liable. *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783.

Creditors' remedies relating to negotiable and non-negotiable choses in action and corporate stocks. 30 MLR 617.

### 335.231 LIABILITY OF DRAWER.

Presentment of demand note for payment was not necessary to charge maker's estate, after his death, since presentment is necessary only to charge persons secondarily liable. *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783.

Acceptance of bills of exchange by conduct. 12 MLR 129.

Death of a drawer of a check. 14 MLR 124.

### 335.232 LIABILITY OF ACCEPTOR.

See, *Farmers State Bank v Ellingson*, 218 M 411, 16 NW(2d) 320, noted under section 335.23.

One who obtains a check through fraudulent representations to the drawer does not receive a good title to the instrument. To be a holder in due course and thereby receive a better title than the endorser, the endorsee cannot take with knowledge of endorser's bad title. *United States v Michaelson*, 58 F. Supp. 796.

Conflict of laws applicable to bills and notes. 1 MLR 117.

Forgery by draft; estoppel raised by acceptance. 6 MLR 405.

Right of drawee to recover the amount paid on a raised check. 11 MLR 68.

Retention of a forged instrument; acceptance. 22 MLR 879.

Inapplicability of the doctrine of *Price v Neal* (3 Burr. 1354, 1 W Bl. 390) to postal money orders; not a negotiable instrument.

### 335.24 WHEN PERSON DEEMED ENDORSER.

Because of long acquiescence and delay to the prejudice of the defendants, plaintiff is estopped from setting up forgery and by his conduct has ratified the action of his pledgee in entering his name upon checks. *Theelke v N. S. Power*, 192 M 330, 256 NW 236.

The payee of a promissory note who endorses it with intentional guaranty of payment becomes absolutely liable to the transferee upon default of the maker without any obligation on the transferee's part to exhaust available legal remedies to collect the note against the maker. A guaranty is absolute and one of payment unless by its terms made conditional. *Holbert v Wermerskirchen*, 210 M 119, 297 NW 327.

# MINNESOTA STATUTES 1947 ANNOTATIONS

807

## UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.271

Acceptance of bills of exchange by conduct. 12 MLR 129.

Counter-presentation of checks; identification of holder and tender of receipt. 13 MLR 281.

Ambiguity as to capacity in which a person signed a note. When is signer deemed to be an endorser? 20 MLR 818.

### **335.245 LIABILITY OF IRREGULAR ENDORSER.**

Counter-presentation of checks; identification of holder and tender of receipt. 13 MLR 281.

Suretyship defenses. 24 MLR 863.

### **335.25 WARRANTY WHERE NEGOTIATION BY DELIVERY OR QUALIFIED ENDORSEMENT.**

Qualified endorsement which may relieve the maker from liability. 1 MLR 373.

### **335.255 WARRANTY OF ENDORSER WITHOUT QUALIFICATION.**

In the instant case the second endorsement was a guaranty of the genuineness of the first endorsement. *Theelke v N. S. Power*, 192 M 330, 256 NW 236.

Presentment for payment is not necessary in order to charge the estate of the maker of a note in virtue of section 335.27, providing that presentment for payment is not necessary in order to charge persons primarily liable; such presentment is necessary under section 335.282 only in order to charge persons secondarily liable. *Rydeen v Collins*; 220 M 374, 19 NW(2d) 783.

Conflict of laws applicable to bills and notes. 1 MLR 117.

Presentments and notice; oral waiver contemporaneous with endorsement. 12 MLR 69.

Identification of the holder and tender of receipt on counter-presentation of checks. 13 MLR 281.

Liability of bankrupt endorser of a note maturing after adjudication. 15 MLR 816.

Liability of transferor; effect of an assignment endorsed on the back of commercial paper. 16 MLR 702.

### **335.261 ENDORSERS PRIMA FACIE LIABLE IN ORDER OF ENDORSEMENT.**

The payee of a promissory note who endorses it with an intentional guaranty of payment becomes absolutely liable to the transferee upon default of the maker without any obligation on the transferee's part to exhaust available legal remedies to collect the note against the maker. *Holbert v Wermerskirchen*, 210 M 119, 297 NW 327.

## PRESENTMENT FOR PAYMENT

### **335.27 PRESENTMENT, WHEN NECESSARY.**

Presentment of demand note for payment was not necessary to charge maker's estate, after his death, since presentment is necessary only to charge persons secondarily liable. *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783.

Effect of holder's failure to present for payment at maturity on liability of persons primarily liable. 18 MLR 734.

### **335.271 PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND.**

Presentment of instruments falling due on Saturday. 20 MLR 670.

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 335.275 UNIFORM NEGOTIABLE INSTRUMENTS ACT

808

Running of the statute of limitation against the maker and the endorser of a demand note. 22 MLR 724.

### 335.275 SUFFICIENT PRESENTMENT.

Presentment of demand note for payment was not necessary to charge maker's estate, after his death, since presentment is necessary only to charge persons secondarily liable. *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783.

### 335.276 PRESENTMENT AT PROPER PLACE.

Conflict of laws as to domicile. 15 MLR 668.

### 335.28 INSTRUMENT MUST BE EXHIBITED.

Sufficiency of presentment for payment by telephone; waiver. 11 MLR 554.

Identification of holder and tender of receipt on counter-presentation of checks. 13 MLR 297.

### 335.282 IN CASE OF DEATH.

See, *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783, noted under section 335.27.

Death of a drawer of a check. 14 MLR 124.

### 335.31 DELAY, WHEN EXCUSED.

Conflict of laws applicable to bills and notes. 1 MLR 401.

Delay in presentment. 16 MLR 701.

### 335.311 WHEN DISPENSED WITH.

Conflict of laws applicable to bills and notes. 1 MLR 414.

Oral waiver of presentment contemporaneous with endorsement. 12 MLR 69.

Delay in presentment. 17 MLR 319.

Running of the statute of limitations against the maker and the endorser of a demand note. 22 MLR 725.

### 335.32 DISHONORED BY NON-PAYMENT, WHEN.

Dishonoring note by non-payment of interest. 9 MLR 472.

Acceptance of credit by payee from drawee as payment of a check. 14 MLR 284.

### 335.33 RIGHT OF RECOURSE OF HOLDER.

Counter-presentation of checks; identification of holder. 13 MLR 280.

Notes payable at bank; effect of failure to present for payment at maturity. 18 MLR 734.

Right of insolvent depository bank to set-off against claim of insolvent correspondent. 18 MLR 792.

### 335.331 WITHOUT GRACE; MATURITY.

Instrument falling due on Saturday. 20 MLR 670.

### 335.34 PAYMENT IN DUE COURSE.

Payee not bound by custom of collecting bank to accept either currency or draft of drawee bank in payment of check. 8 MLR 535.

## NOTICE OF DISHONOR

**335.35 NOTICE OF DISHONOR; HOW GIVEN.**

Where the presentation and demand conforms in all respects to the statutory requirements, and the refusal of the maker to pay is thus brought home to the holder, his failure to notify the endorser cannot be excused on the theory or claim that a formal presentation and demand, though in fact made, was not intended. *Torgerson v Ohnstad*, 149 M 46, 182 NW 724.

See, *Rydeen v Collins*, 220 M 374, 19 NW(2d) 783, noted under section 335.27.

Necessity of notice of dishonor of a corporation's promissory note when the endorsers are directors of the corporation. 5 MLR 72.

Waiver of demand and notice by endorser. 9 MLR 279.

Premature set-off; liability of bank to depositor. 25 MLR 941.

**335.39 BY MAIL.**

Debiting depositor's bank account prior to mailing of notice of dishonor. 25 MLR 941.

**335.42 WAIVER OF NOTICE.**

Extension of time of payment; waiver of demand and notice of endorser. 9 MLR 279.

Oral waiver of notice contemporaneous with endorsement. 12 MLR 69.

Waiver of endorser of conditions precedent to liability. 22 MLR 724.

**335.421 WAIVER IN INSTRUMENT.**

Whether terms on the back of a note are "embodied in the instrument" within the meaning of the negotiable instruments act. 5 MLR 343, 12 MLR 288.

## DISCHARGE OF NEGOTIABLE INSTRUMENTS

**335.45 WHEN AND HOW DISCHARGED.**

Where the complaint alleges non-payment of a note payment must be pleaded as new matter. A general denial does not raise the issue. *Shapiro v Larson*, 206 M 440, 289 NW 48.

Absent a provision in a note and the mortgage given to secure payment thereof and a direction in the decree of foreclosure for application of the proceeds of the foreclosure sale, the proceeds of such sale should be applied by the court as an involuntary payment according to justice and equity; and where there are no controlling equities which compel a different application, such proceeds should be applied first on the indebtedness for which personal liability is barred by the statute of limitations and then to the balance. *Mass. Mut. v Paust*, 212 M 56, 2 NW(2d) 410.

A trust deed was given to secure the payment of a series of bonds and upon default was foreclosed by action, the sale under foreclosure resulting in the property covered by the trust deed being bid in for the full amount of the outstanding bonds, interest, and expenses of sale. Thereby the grantor's debt on the bonds was fully paid and the bonds, after confirmation of the sale, ceased existence as commercial paper and became merely evidence of the bondholders' proportionate rights in the redemption money, if redemption was made, or in the property or its proceeds, if no redemption took place. *Olmsted Co. Bank & Trust v Pesch*, 218 M 424, 16 NW(2d) 470.

No consideration is necessary to support an agreement by a creditor to accept less than the amount due on a liquidated past due indebtedness in discharge of the whole. Absent manifestation of intention to abandon or to commit a breach thereof,

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 335.451 UNIFORM NEGOTIABLE INSTRUMENTS ACT

810

termination or rescission of a contract for an alleged but non-existent default of payment is without effect. *Brack v Brack*, 218 M 503, 16 NW(2d) 557.

Assumption of mortgage by grantee; mortgagor's right of subrogation. 15 MLR 818.

Release of mortgagor by extension of time of payment. 17 MLR 220.

Discharge of accommodation maker by release of mortgage security. 18 MLR 473.

Release of endorser from liability by oral agreement. 19 MLR 335.

Transfer of note to maker as collateral security as constituting a discharge. 20 MLR 308.

Extension of time to principal debtor as releasing accommodation maker. 24 MLR 863.

### 335.451 DISCHARGE FROM SECONDARY LIABILITY.

The co-surety is not relieved from his part of the liability because of the failure of the trustee for the bond holders to file a claim in the probate court within the statutory time against the estate of deceased surety. *First Mpls. Trust v Nicollet Syndicate*, 192 M 307, 256 NW 240.

Effect upon the liability of guarantor upon release of principal debtor by statute of limitations. 3 MLR 534.

Payment of interest in advance after maturity as extension of time of payment and discharge of parties secondarily liable. 11 MLR 461.

Extension of time of payment by mortgagee to grantee as releasing the mortgagor. 12 MLR 668; 17 MLR 220.

Identification of holder and tender of receipt on counter-presentation of checks. 13 MLR 293.

Oral agreement releasing endorser from liability. 19 MLR 335.

Suretyship defenses; extension of time to principal debtor as releasing accommodation maker. 24 MLR 864.

### 335.46 RENUNCIATION OF RIGHTS BY HOLDER.

Requirement that renunciation be written. 19 MLR 335.

### 335.48 ALTERATION OF INSTRUMENT; EFFECT OF.

Alteration of instruments. 9 MLR 569.

Holder in due course may recover according to original tenor of instrument. 12 MLR 287.

Identification of holder and tender of receipt on counter-presentation of checks; prophecy of rules to be adopted generally in signature in blank for identification. 13 MLR 281, 314.

Alteration of interest provision contained in separate agreement. 15 MLR 234.

Implied authority to fill blanks in non-negotiable instruments under sale. 15 MLR 462.

### 335.481 WHAT CONSTITUTES A MATERIAL ALTERATION.

Where an alteration of a chattel mortgage is made without any intention to defraud, merely to correct an error in drawing the instrument so as to make the instrument conform to the undoubted intention of the parties, it is not such an alteration as will avoid the instrument. *Hannah v State Bank*, 195 M 54, 261 NW 583.

Original debt sufficient consideration to support the renewal of a void note; alteration of note by changing interest rate. 9 MLR 569.

# MINNESOTA STATUTES 1947 ANNOTATIONS

811

UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.532

Holder in due course may recover according to original tenor of instrument. 12 MLR 286.

## BILLS OF EXCHANGE; FORM; INTERPRETATION

### 335.49 BILL OF EXCHANGE.

Letters of credit; issuing bank's liability. 9 MLR 657.

### 335.491 NOT AN ASSIGNMENT OF FUNDS.

Death of the drawer of a check. 14 MLR 124.

When does a check operate as an equitable assignment? 14 MLR 158.

### 335.501 WHEN BILL MAY BE TREATED AS PROMISSORY NOTE.

Rights of remitters and other owners not within the tenor of negotiable instruments. 12 MLR 587.

### 335.502 REFEREE IN CASE OF NEED.

Acceptance of bills by conduct. 12 MLR 133.

## ACCEPTANCES

### 335.51 ACCEPTANCE, HOW MADE.

An order on a garnishee to secure payment of the purchase price of a team of horses was in the form of a bill of exchange but not accepted by the garnishee in writing. The transaction operated as an equitable assignment of the garnishee's indebtedness in the amount represented by the order. *Carlson v Stafford*, 166 M 481, 208 NW 413.

Acceptance of bills of exchange by conduct. 12 MLR 129.

Effective time of an acceptance. 23 MLR 776.

### 335.513 PROMISE IN WRITING.

Defendants telegraphed plaintiff bank: "We will honor draft of G. Roedel bill of lading attached for stock purchased by him shipped Thuet Brothers." In the light of the surrounding circumstances, the relations of the parties, and their conduct, this telegram is held to be an acceptance by defendants of all drafts drawn on them by the person named, with bill of lading attached to pay for stock shipped to defendants by him during the current season, and not merely an acceptance of only the first draft drawn. *James River Nat'l Bank v Thuet*, 135 M 30, 159 NW 1093.

### 335.52 TIME ALLOWED FOR ACCEPTANCE.

Effective time of an acceptance. 23 MLR 776.

### 335.53 REFUSAL OR FAILURE TO RETURN.

Under the provisions of the negotiable instruments act the retention by the drawee bank of a check for more than 24 hours after its presentment constitutes acceptance. *Miller v Farmers State Bank*, 165 M 339, 206 NW 930.

Acceptance by retention of check by drawee. 10 MLR 529.

Acceptance of bills by conduct. 12 MLR 131.

Acceptance; retention of a forged instrument. 22 MLR 879.

### 335.532 KINDS OF ACCEPTANCES.

Acceptance of bills of exchange by conduct. 12 MLR 129.

PRESENTMENT FOR ACCEPTANCE

**335.55 PRESENTMENT FOR ACCEPTANCE; WHERE MADE .**

Where it is shown that the drawer of a check did not have sufficient funds in the bank for payment thereof, prima facie the drawing of the check is unauthorized, and the burden is then upon the drawer, if he makes such a claim, to show some arrangement with the bank to pay the check otherwise than out of his checking account. In re Hore's Estate, 220 M 365, 19 NW(2d) 778.

Conflict of laws applicable to bills and notes. 1 MLR 405.

**335.56 PRESENTMENT, WHEN AND WHERE MADE.**

Unless the drawee had notice of the draft before he received the property, the exact time of its presentment is not important in determining the rights of the payee as against him. Hoven v Leedham, 153 M 95, 189 NW 601.

**335.581 RECOURSE, WHERE LOST.**

Acceptance of bills of exchange by conduct. 12 MLR 129.

Retention of a forged instrument. 22 MLR 879.

ACCEPTANCE FOR HONOR

**335.633 LIABILITY OF ACCEPTOR FOR HONOR.**

Where shipper of livestock, under an arrangement with commission firm engaged in the business of selling livestock upon commission for others, drew drafts upon it whenever needed for his business, the proceeds of which were to be credited to his personal bank account and there commingled with his other bank credits, pursuant to an agreement with the commission firm to finance his business and to honor drafts up to a certain limit for that purpose, the relationship between the shipper and the commission firm was that of debtor and creditor, not trustee and beneficiary, and the bank in which the proceeds of the drafts were deposited was not liable to the commission firm for failing to see to it that its depositor applied the funds in accordance with the agreement between him and the commission firm. Farmers State Bank v Ellingson, 218 M 411, 16 NW(2d) 319.

PROMISSORY NOTES AND CHECKS

**335.72 PROMISSORY NOTE.**

A written agreement for the extension of a loan secured by a mortgage on real estate does not supplant the original note as the primary evidence of the debt to such extent that its possession by a broker, nothing more appearing, is any evidence of authority to collect on behalf of the mortgagee. Anderson v Goetze, 176 M 399, 223 NW 459.

A promissory note taken for the amount of the debt does not operate as payment and discharge thereof unless expressly so given and received. The burden of proof to that effect is upon the party asserting it. Penn Anthracite Co. v Clarkson, 205 M 517, 287 NW 15.

Acceptance of bills by conduct. 12 MLR 133.

Promissory note as a substitute for money. 14 MLR 313.

Effect of acceleration clause on negotiability. 16 MLR 302.

Liability of transferor upon assignment endorsed on the back of commercial paper. 16 MLR 702.

Notes payable to the order of the maker. 24 MLR 861.



# MINNESOTA STATUTES 1947 ANNOTATIONS

813

UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.743

## 335.73 CHECK IS BILL OF EXCHANGE.

In an action against an issuing bank by the named payee to recover on a cashier's check issued for a special purpose and subject to a contract between the payee and the purchaser by which the check was used as an earnest money deposit, and, by the terms of the contract, was to be returned to the purchaser in the event that the payee could not perform his contract, the trial court was justified in interpleading the purchaser of the check and discharging the bank as defendant. *Denotes v Zeches*, 212 M 260, 3 NW(2d) 432.

Check as payment. 2 MLR 474.

Gift inter vivos of bank deposit subject to check. 9 MLR 484.

Identification of holder and tender of receipt on counter-presentation of checks. 13 MLR 281.

Running of the statute of limitations against the holder of a check. 25 MLR 371.

## 335.74 WITHIN WHAT TIME A CHECK MUST BE PRESENTED.

Where the drawer of a check did not have sufficient funds in the bank for payment thereof at the time he drew it and promised the payee to deposit funds sufficient for payment, but did not do so, he is not discharged by the payee's nonpresentment of the check for payment, because he has not been damaged by the failure to present it for payment. *In re Hore's Estate*, 220 M 365, 19 NW(2d) 778.

Death of drawer. 14 MLR 124.

Duty of carriers to present check received in payment of freight charges. 15 MLR 702.

Delay in presentment of check as payment of debt. 16 MLR 701; 17 MLR 320.

Effect of holder's failure to present for payment at maturity on the liability of persons primarily liable. 18 MLR 735.

Running of the statute of limitations against the holder of a check. 25 MLR 371.

## 335.741 CERTIFIED CHECK.

The rule is adopted that a deposit is a transaction peculiar to the business of banking. A certificate of deposit is what it purports to be, a deposit with the bank by the depositor. It is not a promissory note where the debtor must find the lender to meet his obligation. A bank is not required to hunt up the depositor and pay him the money it owes him, as an ordinary lender is bound to do with his creditor. The statute of limitations is not available to a bank in respect to cashier's checks, certified checks, certificates of deposit, or similar. This overrules *Mitchell v Easton*, 37 M 337, 33 NW 910, insofar as it holds to the contrary, and as affecting the right of the state to take over abandoned bank accounts. *State v Northwestern Bank*, 219 M 491, 18 NW(2d) 569.

Cancellation of certification made by mistake. 14 MLR 678.

## 335.743 CHECK NOT ASSIGNMENT OF FUNDS.

The statute provides that a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged to the extent of the loss caused by the delay. The drawer in the instant case requested the drawee to hold the check until he could make a deposit. The drawer died one month and eight days after signing the check. The liability survives the death of the drawer and is provable against his estate. *In re Hore's Estate*, 220 M 365, 19 NW(2d) 780.

Check as payment. 2 MLR 474.

Delivery of a check as a gift. 8 MLR 546.

Identification of the holder and tender of receipt on the counter-presentation of checks. 13 MLR 281.

Drawee bank's right to debit the drawer's account when paying a stopped check. 13 MLR 373.

Checks as an equitable assignment. 14 MLR 157.

Applicability of negotiable instruments law to check presented by drawer directly to drawee bank. 28 MLR 194.

**335.75 BANKS RECEIVING ITEMS FOR DEPOSIT OR COLLECTION; ACTING ONLY AS COLLECTING AGENT FOR DEPOSITOR; LIABILITY.**

Collecting banks without authority to accept in payment anything other than money. 7 MLR 55.

Effect of stipulations in passbook on liability of depository bank for default of correspondent bank. 9 MLR 671.

Rights of depositor of check in bank for collection against correspondent bank for negligence. 11 MLR 68.

Continued course of dealing as raising an agency for collection. 12 MLR 176.

Sending check directly to drawee bank by mail. 12 MLR 744.

Identification of the holder and tender of receipt on the counter-presentation of checks. 13 MLR 281.

Acceptance by collecting bank of draft of drawee bank in lieu of cash. 15 MLR 231.

Sending checks directly to drawee bank and accepting draft in payment; effect of federal reserve regulations on liability of collecting bank. 16 MLR 432.

Liability of correspondent bank for default of subagent. 16 MLR 582.

Right of insolvent depository bank to set off against claim of insolvent correspondent. 18 MLR 792.

Drawee bank as depository; point at which payment is complete. 24 MLR 983.

Indebitatus assumpsit for money had and received. Requirement for unjust enrichment, checks, forged endorsements, liability of collecting bank. 27 MLR 585.

GENERAL PROVISIONS

**335.77 PERSON PRIMARILY LIABLE ON INSTRUMENT.**

Release of principal debtor by statute of limitations; effect upon liability of guarantor. 3 MLR 535.

Necessity of exhausting legal remedies against insolvent maker before holding guarantor. 9 MLR 387.

Extension of time of payment by mortgagee to grantee as releasing mortgagor. 17 MLR 222.

**335.78 REASONABLE TIME, WHAT CONSTITUTES.**

Delay in presentment. 16 MLR 701; 17 MLR 319.

**335.80 CASES NOT PROVIDED FOR.**

The instant case is not one of delay in making presentment, but one of no presentment at all. Section 335.80 provides that in cases not covered by the statute the law merchant shall apply. Under the law merchant the drawer is discharged in case of failure to present only to the extent of the damage. As there were no funds in the bank to meet the check, he was not damaged at all. The check based upon ample consideration was a valid claim against the estate of Hore. In re Hore's Estate, 220 M 365, 19 NW(2d) 778.

Holder in due course. 1 MLR 447.

Commercial instruments, the law merchant, and negotiability. 8 MLR 361.

Acceptance of bills by conduct. 12 MLR 145.

# MINNESOTA STATUTES 1947 ANNOTATIONS

815

UNIFORM NEGOTIABLE INSTRUMENTS ACT 335.80

Rights of remitters. 12 MLR 588.

Travelers checks. 13 MLR 146.

Death of a drawer of a check. 14 MLR 136.

Double forgery; right of drawee to recover amount paid. 14 MLR 283.

Purchase of series of notes after maturity of one. 15 MLR 586.

Extension of time of payment by mortgagor to grantee as releasing mortgagor. 17 MLR 222.

Insolvent depository's right to set off against claim of insolvent correspondent. 18 MLR 874.

## THE LAW MERCHANT

Minnesota Statutes 1945, Section 335.80, provides that in any case not provided for in the Uniform Negotiable Instrument Act, the rules of law and equity, including the law merchant, shall govern. This is a distinct legislative recognition of the historical fact that the law merchant has a history and has a development distinct and essentially different from that of the common law; and although ultimately the administration of the rules of the law merchant, substantive and procedural, was assumed by the King's courts, its fundamental principles remained substantially distinct.

"There is no part of the history of English law more obscure than that connected with the common maxim that the law merchant is part of the law of the land." Blackburn, *Law of Sales*, 1st Ed. 207.

Institutions which are the very heart of modern business life, the fountains of not ungrateful streams of litigation, are accepted as though, like the image of Ephesus, they fell direct from heaven for the benefit of a deserving profession. The legal questions to which they give rise are studied with minute care; the legal relationships which they create are made the occasion of microscopic analysis; but the really interesting and important matter, the subject itself, is left untouched. *Law Review Quarterly* (Jenks) 1893, Vol. IX, pp. 70-85.

Egypt, Phoenicia, and other ancient countries observed rudimentary customs and regulations relating to trade, but we owe to Babylon the first proven manifestations of commercial law. The Babylonian laws, observed throughout the ancient trading world, were remodeled by Rome, and adopted and promulgated throughout the East by Byzantium. When the Italians, prior to the crusades, took over the trade of the Mediterranean, they developed a system of maritime law; and Lombardy, who taught the world bookkeeping and banking, established by precedent a usable system of commercial regulations.

The law merchant for the most part was derived from three sources: (1) Rules developed through maritime sources; (2) customs of cities as approved by city tribunals; and (3) decisions of the Pi Poudre courts serving the great fairs.

The law relating to maritime trade was codified early in the thirteenth century. The most popular codifications were: The *Consulto del Mare*, issued from Barcelona; *Judgments of the Sea of Charle d'Oleron*, from Rochelle; and *Wisby Waterrecht* from Gothland. In editing these codes references were frequently made to the customs of the city of Trani, and to the *Tabula Amalfitania*.

Originally, in medieval times, cities were governed as feudal manors. They were ruled by a count for the King, or given to a court favorite to rule as he willed, or made a part of a clerical benefice. These appointees or their seneschals presided over the city courts. It was a happy and profitable arrangement for all except the citizens.

Later, and especially during the crusades, the citizens by force, purchase, or treaty obtained charters granting a limited degree of freedom and self-government. The first thing any city endeavored to secure was the privilege of holding its own court. The law administered in the city courts took cognizance not only of local customs but of uniform rules of trade as well. Uniformity was necessary otherwise traders from other cities and countries would not visit the city for purposes of exchange or sale of goods.

Much of the commerce of the middle ages was carried on by means of the great fairs. No market could be established without permission of the sovereign, and to every market was granted the privilege to conduct a *Pi Poudre* court. These courts enjoyed privileges over the courts of the sovereign in the summary character of the proceedings, exemption from the ecclesiastical prohibition against usury, effect of payment of God's penny, for the most part freedom from review, and other privileges. The best evidence procurable, without loss of time or expense, was admissible. The law merchant was originally a branch of the law of nations, a form of private international law; and the same rules of reason and experience, and the like proceedings were observed in every nation.

As the same traders visited many fairs, it frequently occurred that persons of experience and reputation for probity served fairs in several countries.

If the fair franchise ran to borough or city, the court was conducted by the mayor and bailiffs; if to a lord, by his steward and sergeants; and if to a bishop, by his justiciars. The Hanse and other free cities selected "barons" to hold the pleas of the fair. Administration of the *lex mercatoria* quite nearly followed the *jus gentium* as enforced through the *praetor peregrinus*.

Causes were heard expeditiously from day to day, or tide to tide, and where necessary on Sundays or feast days. During the fair the bailiffs of the city surrendered their rods to the bailiffs of the fair, who during the fair maintained the peace of the city.

Blackstone says that in his day the *Pi Poudre* courts were "in a manner forgotten"; but a court was held at Bartholomew Fair in London as late as 1854; at Hemel Hempstead in 1898, and in Bristol at the present time.

During the years our common law was developing through the decisions of the King's courts, the priest, the Jew, and the merchant were privileged to enjoy separate courts of their own. The canon law of the Church was within the jurisdiction of the Court Christian; the affairs of the Jews were adjudged in the *Scaccarium Judeorum*; and merchants were privileged to resort to the *Pi Poudre* and other special courts administering the law merchant.

The *lex mercatoria* interested two classes of people, the *mercatores* and the *marinarii*. "As the roundness of the globe of the world is compounded of the waters and the earth, so the law merchant cannot be complete without sea laws." Malynes, *Lex Mercatores*, 87.

From the first the law merchant was administered in the local and special courts of the *mercatores et marinarii*.

The *Carta Mercatoria* of Edward I granted certain rights in protection of foreign merchants and provisions for fair trial under the law merchant.

The statute of the staple, 1353, 27 Edward III c. 8, granted wide powers to the courts of certain market cities.

A special court having jurisdiction in insurance cases was created by 43 Elizabeth c. 12. It fell into disuse when in *Came v Moye*, 2 Sid. 121, the court held that a judgment of the commissioners was not a bar to a suit at law.

In some jurisdictions the *Pi Poudre* court had jurisdiction only during the fair, and a *Tolsey* court continued to administer the law merchant throughout the year but in a less summary manner. Even during the years when England suffered the misrule of the Poitevin adventurers, the law merchant was quite generally honestly administered.

"I have entituled the book according to the ancient name *Lex Mercatoria*, and not *jus mercatorium* because it is a customary law, approved by the authority of the kingdoms and commonwealths, and not a law established by the sovereignty of any prince, either in the first foundations or by continuance of time." Malynes, Preface to *Lex Mercatoria*.

"And if it happen that between merchant and merchant, or citizen and citizen, there is a dispute as to a debt, and a tally is produced by one party, and such tally is disowned, then shall the party bringing the tally have his proof according to the

law merchant; provided that such proof is made by citizens and merchants or other good and lawful men, and not by ribald persons." Riley, Customs of London, 255.

The civilized world today is governed by two systems of jurisprudence; the civil law created by the Romans, and the common law conceived and slowly nursed into existence by the Normans. The civil and criminal procedure under the Saxons was little removed from savagery. The Norman conquest produced a revolution in jurisprudence.

Building on customs and laws he found, the Italian, Lanfranc, one time archbishop of Canterbury, within a few brief years after the Norman conquest had created a system of jurisprudence, forerunner of what we have today. Ranulf continued the work under William Rufus. There was a Saxon resurgence under Henry I, but although Saxon laws were resurrected, Beauclerk, Roger of Salisbury, and Alberic de Vere were able to preserve the Norman court system.

"The *lex non scripta* includes not only general customs of the common law, but also particular customs of certain parts of the Kingdom, and likewise those particular laws that are by custom observed in certain courts and jurisdictions. The law merchant is a branch, or rather a component part of the common law.

The *lex mercatoria*, however different from the general rules of the common law, is engrafted into it and made a part of it, being allowed for the benefit of trade to be of the utmost validity in all commercial transactions. The transactions of commerce were regulated by a law of its own, and that was the law merchant which all nations agree in and take notice of." Blackstone Com. 273.

The *lex mercatoria* was not, like the common law, the custom of a place or territory. It was the recognized custom of merchants and traders who had business relations in various countries. Disputes between merchants arising out of commercial transactions, were not subject to the common law. The necessities of trade made it mandatory that in all places the same rules be administered and enforced in commercial litigation.

"In the sixteenth century the admiralty court widened its jurisdiction to embrace mercantile cases, and defined and declared the principles of the law merchant. The encroachment of the common law courts gradually reduced the jurisdiction of the admiralty courts in commercial cases with consequent increase in the jurisdiction of the common law courts. The law merchant then became a part of the legal system of England; but the rules of the law merchant remain a body of laws which were applied to particular classes of transactions rather than to a particular class of men." 2 Street, Foundations of Legal Liability 331.

The history of the mercantile law may be divided into three periods: (1) Prior to the appointment, in 1606, of Coke as Chief Justice, the law merchant, as far as it existed, was administered in special courts, and for the purpose of settling the disputes of a special class, subject to peculiar duties and peculiar rights; (2) from the time of Coke to the appointment of Lord Mansfield in 1756, during which interim the mercantile law consisted of a body of customs, to be proved, in case of doubt, as facts, and binding only upon a special class; and (3) from 1760 to the present, in the early part of which period Lord Mansfield made the law of merchants and the law of the land the same.

"Though its principles were adopted into the common law by Lord Mansfield, the law merchant still remained a body of rules applicable to a certain class of transactions and international in character." Jenks, History of English Law, 239, 303.

The law merchant is an independent parallel system of law, like equity or admiralty. Bigelow, Bills, Notes and Checks 5.

Sir John Davies says, "That until he understood the difference between the Law Merchant, and the Common Law of England, he did not a little marvel what should be the cause that in the books of the Common Law of England there are to be found so few cases concerning merchants and ships, but now the reason was apparent, for that the Common Law did leave those cases to be ruled by another law, the Law Merchant, which is a branch of the Law of Nations."

Lord Mansfield, during the thirty-two years in which he served as Lord Chief Justice of the King's Bench, admittedly constructed his system of commercial law

# MINNESOTA STATUTES 1947 ANNOTATIONS

by moulding the findings of his special juries as to the usages of merchants on principles frequently derived from civil law and the law of nations. Junius in one of his bitter open letters to Mansfield says, "In contempt or ignorance of the common law of England, you have made it your study to introduce into the court when you preside, maxims of jurisprudence unknown to Englishmen. The Roman Code, the law of nations, and the opinions of foreign civilians, are your perpetual theme."

But Lord Campbell says that "In no instance did Mansfield ever attempt to substitute Roman rules and maxims for those of the common law. He made ample use of other compilations for a supply of principles to guide him upon questions unsettled by prior decisions in England."

Coke left mercantile cases to the decision of the jury, and they produced no established principle. It was left to Mansfield to give form and coherence to banking, insurance, notes, and bills, and other phases of the law merchant.

A lawyer in the reign of Edward III, and one in the reign of Elizabeth or Charles would have stated that the law of merchants is part of the law of the land; but they would not have understood the maxim in the same sense; and neither would have understood it in the sense it is now used.

"The *lex mercatoria* or common law of the law of merchants is a more universal authority than the common law of England. Randolph Commercial Paper 1.

At present when it becomes a question what the law merchant is in a particular case, the maxim, *ad questionem legis respondent judico*, applies. The law merchant cannot, since Mansfield's time, be proved before a jury by witnesses as a matter of fact, and so be subjected to them to determine what it is.

Statutes passed in derogation of the common law should be construed strictly, nor is there any subject matter to which that rule should be applied with greater intensity than where the attempt is made to change by local legislation the rules of commercial law, applicable to commercial instruments. *Ross v Jones*, 89 US (Wallace) 591; *Goodman v Simonds* 61 US (20 Howard) 343, (Cases examined).

The courts of the United States are not controlled by the decisions of state courts on questions of general commercial law. *Swift v Tyson*, 16 Pet. 1; *Oates v National Bank*, 100 US 239; *Railroad v National Bank*, 102 US 14.

A statute of a state which runs counter to the well known principles of commercial law, and which forbids a suit being brought in such case after the maturity of the bill, can have no effect upon suits brought in the federal court. The constitution and laws of the United States having conferred on the citizens of the several states and on aliens the privilege of enforcing their rights acquired under and defined by that general commercial law before the judicial tribunals of the United States, it must follow that any state law or regulations, the effect of which would be to impair the rights thus secured, or to divest the federal courts of jurisdiction, would be nugatory. *Watson v Tarpley*, 59 US (18 Howard) 517.

The decisions of the supreme court of California holding that judgment creditors of a mining corporation may question the validity of a mortgage given by a corporation on the ground it was not ratified by the stockholders as required by state statute, do not relate to any question of commercial or general statute law, but are local in effect, and are binding on the federal court. *Williamson v Gold Hill Mine*, 96 F. 454.

The law merchant is part of the common law of England, and as such is adopted by our constitution as our law also. It is the law of the whole mercantile world. It is to be taken notice of by the judges as such and to be understood and declared by them in the same way as all other parts of the law are interpreted and declared. When it becomes a question what the law merchant is in any particular case in forensic discussion, that question must be answered by the judges, and not by the jury, according to the old maxim, *ad questionem legis respondent iudices*; for this law merchant cannot, no more than any other part of the common law, be proved before a jury by witnesses as a matter of fact, and so be subjected to them to determine what it is. *Ferris v Saxton*, 4 NJL (1 Southard) 20.

The court cannot presume without evidence that the common law of England is also the common law of her colonies; nor can the court presume that all property

on land is liable for distress for rent, as there are many and important exceptions made in favor of trade and commerce. The unwritten law of a foreign country or province must be proved as a fact. *Owen v Boyle*, 15 Maine 147.

There is no presumption that the common law is in force in Russia. There is no presumption that the "law merchant," taken as a vaguely defined portion of the common law or in its widest interpretation of the law of European countries having the Roman and Frankish law for its parents, prevails in other countries. *Savage v O'Neil*, 44 NY 298; *Plato v Mulhall*, 72 Mo. 522; *Aslanian v Dostumain*, 174 Mass. 328; *Wharton on Evidence*, ss. 314, 1292.

The Missouri court cannot take judicial notice of the statutes of another state; neither can it presume that the common law prevails in a state, such as Texas, which was never subject to the laws of England. *Plato v Mulhall*, 72 Mo. 522; 2. *Starkie on Evidence*, 4th American Ed. 568.

There is no such thing as a general commercial or general common law, separate from, and irrespective of a particular state or government whose authority makes it law. Law is defined as a rule prescribed by a sovereign power. By whom is a general commercial law prescribed, and what tribunal has authority or recognition to declare or enforce it outside of the local jurisdiction of the government it represents? Even the law of nations is a law in name only. It has but a moral sanction, and the only tribunal that undertakes to enforce it is the armed hand, the *ultima ratio regum*. The so-called commercial law is likewise a law only in name. Upon many questions arising in the business dealings of men, the laws of modern civilized states are substantially the same, and it is therefore common to say that such is the commercial law, but, except as a convenient phrase, such general law does not exist. There must be a state, or government, of which every law can be predicated, and to whose authority it owes its existence as law. Without such sanction, it is not law at all; with such sanction, it is law without reference to its origin or the concurrence of other states or people. Such sanction it is the prerogative of the courts of each state to declare. Their jurisdiction is final and exclusive, and in this respect there is no distinction between statute and common law. *Forepaugh v Railroad Co.* 128 Pa. 226, 18 Atl. 503.

There is a presumption that the common law as we understand it is the common law, and often, if not always, that it is the law of other common law states; but there is no presumption that it prevails all over the world. There is no such presumption as to the so-called law merchant taken as meaning substantive law. The law merchant in this sense is merely a vaguely defined portion of the common law, or in its widest interpretation, of the law of European countries, having the Roman and the Frankish law for its parents. Our law of negotiable paper has no orthodox sanction of having been accepted *semper ubique et ab omnibus*. In the instant case it is not to be presumed that either the Roman or Frankish law shaped the law of Turkey. *Aslanian v Dostumian*, 174 Mass. 331.

Whether a written promise is a negotiable instrument having the qualities of commercial paper is a matter to be determined by the fiat of the law to be established either by a universal custom of the commercial world or by statutory enactment. The law before the enactment of any statute on the subject was that which originated under long established custom and usage, and constitutes that branch of the law known as the law merchant, but it is competent for the law-making power of any state or country, by statute, to regulate the making, construction, validity, formalities, and authentication of contracts which are entered into or to be performed within its territory, and within such powers is included the one to enlarge or diminish the character of paper which is negotiable, and to add to or deprive it of "the characteristics and qualities which distinguish it from other contracts" and which render it either negotiable or not negotiable. *Kirkpatrick v Lebus*, 184 Ky. 146.

The law merchant grew up from "usages of trade which general convenience and a common sense of justice have established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world. *Kent's Commentaries*, Vol. 3, p. 2; *Gorin v Wileg*, 215 Ill. 548; *Bank of Conway v Stary*, 51 ND 399, 200 NW 508; *Cloustin v Ogden*, 1 Haw. (Hawaiian) 309; *Woodbury v Roberts*, 59 Iowa 349.

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 335.80 UNIFORM NEGOTIABLE INSTRUMENTS ACT

820

A court takes notice of prior jurisprudence which lies at the basis of local law. *Stokes v Mackin*, 62 Barb. 145; *Prell v McDonald*, 7 Kansas 426; Wharton on Evidence, p. 314.

When the American Law Institute completed the topics to which its efforts had been dedicated, it turned to a new field of service and joined with the National Conference of Commissioners on Uniform State Laws in producing a commercial code. The joint enterprise began in July, 1942. Even when they complete their task the law merchant will retain at least an historical interest.

### NOTE:

Bibliography: Select cases of the Law Merchant Vol. 1 (Selden); Select pleas in Manorial Courts, Vol. I; Select essays in Anglo-American Legal History, Vol. III; *Le Droit des Marches et des Foires*; Early History of the Law Merchant, XVII Law Quarterly Review 232; *Studying Law*, (Vanderbilt), 271, 299, 324, 401; Smith, *Mercantile Law*, 10th Ed., Introduction; Wharton on Evidence, ss. 314, 315, 1292; *Commercial Instruments*, 8 MLR 361.