

CHAPTER 335

UNIFORM NEGOTIABLE INSTRUMENTS ACT

FORM, INTERPRETATION

335.02 FORM OF NEGOTIABLE INSTRUMENT

Doctrine of Price v Neal; unilateral mistake of fact; overdraft. 33 MLR 305.

335.052 PAYABLE TO BEARER, WHEN

HISTORY. 1913 c 272 s 9; MS 1927 s 7052; 1953 c 146 s 1.

Double forgery; drawee's right to recover proceeds paid to a good faith purchaser. 32 MLR 817.

335.071 ANTE-DATED AND POST-DATED

Doctrine of Price v Neal; unilateral mistake of fact; overdraft. 33 MLR 305.

335.081 INCOMPLETE INSTRUMENT COMPLETED WITHOUT AUTHORITY

Evidence that defendant, the endorser of a promissory note, in the presence of plaintiff delivered it to escrow holder with specific instructions as to the conditions attached to its delivery to plaintiff and that plaintiff, in violation thereof, obtained its delivery from the escrow holder as a partial payment on a transaction drastically different from that on which defendant had instructed the note's delivery, was sufficient to sustain the jury's finding that plaintiff's possession of the note was fraudulent and its title thereto defective. *Grocers, Inc. v Horstman*, 233 M 192, 45 NW(2d) 254.

335.116 AGENT NOT LIABLE, WHEN

Where an agent makes an unauthorized contract, the principal must accept or reject it as a whole; he cannot enforce provisions beneficial to himself and repudiate those beneficial to the other party. *Knaus v Donaldson*, 235 M 453, 51 NW(2d) 99.

335.12 FORGERY

Double forgery; drawee's right to recover proceeds paid to a good faith purchaser. 32 MLR 817.

Drawer's negligence, precipitating forgery. 37 MLR 201.

Delay in notifying prior party. 37 MLR 201.

CONSIDERATION

335.13 PRESUMPTION OF CONSIDERATION

Note executed by father of payee at the same time and as a part of the same transaction as an attached instrument which recited that payee agreed not to attempt to collect the note until maker's death, and further recited that the note was given in consideration of services, and did not become due and payable until date of maker's death. *Stucky v Harris*, 224 M 220, 28 NW(2d) 155.

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As between the payee and the maker of a note, want of consideration is a complete defense, the consideration for a note must be something which both parties have adopted and regarded as a benefit to one party or a detriment suffered by the other. The fact that the maker of the note owed money to the payee for room rent, and had promised to marry the payee, did not supply consideration for a note which was given to the payee as a present. The gift of the note operated as an executory promise without consideration. *Suske v Straka*, 229 M 409, 39 NW(2d) 745.

335.131 VALUE

As between the payee and the maker of a note, want of consideration is a complete defense, the consideration for a note must be something which both parties have adopted and regarded as a benefit to one party or a detriment suffered by the other. The fact that the maker of the note owed money to the payee for room rent, and had promised to marry the payee, did not supply consideration for a note which was given to the payee as a present. The gift of the note operated as an executory promise without consideration. *Suske v Straka*, 229 M 409, 39 NW(2d) 745.

335.134 ABSENCE OF CONSIDERATION MATTER OF DEFENSE

As between the payee and the maker of a note, want of consideration is a complete defense, the consideration for a note must be something which both parties have adopted and regarded as a benefit to one party or a detriment suffered by the other. The fact that the maker of the note owed money to the payee for room rent, and had promised to marry the payee, did not supply consideration for a note which was given to the payee as a present. The gift of the note operated as an executory promise without consideration. *Suske v Straka*, 229 M 409, 39 NW(2d) 745.

NEGOTIATION

335.15 WHAT CONSTITUTES NEGOTIATION

HISTORY. RL 1851 c 34 s 4; PS 1858 c 29 s 4; GS 1866 c 23 s 9; GS 1878 c 23 s 16; GS 1894 s 2236; RL 1905 s 2745; 1913 c 272 s 30; GS 1913 s 5842; GS 1923 s 7073; MS 1927 s 7073.

Reacquisition and reissue by payee; liability of intermediate indorser to the holder. 31 MLR 737.

335.196 WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT

Liability of intermediate endorser of a bill or note to the holder thereof upon reacquisition and reissue by the payee. 31 MLR 737.

RIGHTS OF HOLDER

335.201 HOLDER IN DUE COURSE

Transferee after maturity of one or more but less than all of the installments of an installment note by a holder in due course. 31 MLR 289.

In the absence of agreement that a renewal note shall constitute absolute payment, the mere acceptance of the renewal note, although there is a written recitation that it is received in settlement or payment of a prior note or obligation, is only conditional payment and does not affect an absolute discharge of the prior obligation. *Holden v Farwell*, 224 M 550, 27 NW(2d) 641.

In an action by a holder in due course against an acceptor to recover the first amount of trade acceptance, an alleged parol agreement that the drawer would not negotiate the acceptance until drawer's delivery of the merchandise in payment

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of which the acceptance was given, was inadmissible. *Werger v Frederick Lee*, 175 F(2d) 851.

335.221 HOLDER OTHER THAN IN DUE COURSE

Where a mistake had been made in computing interest on installment notes secured by a mortgage and the payments made by the decedent were less than they should have been, a correction may be made. In the absence of agreement to the contrary the debtor has a right to apply payments as he sees fit. A party who seeks to enforce a right because of a mistake is not chargeable with laches until he discovers the mistake. He is chargeable with knowledge of the facts from which in the exercise of due diligence he ought to have discovered the error. An essential element in the doctrine of laches is prejudice to the other party; and where both parties to an action were seeking affirmative relief against the other in reference to the same transaction, neither may assert that the other was guilty of laches. *Steenberg v Kay-sen*, 229 M 300, 39 NW(2d) 18.

335.222 BURDEN OF PROOF AS TO TITLE

Purchaser for value and discharge of unknown existent debt; restitution, negotiable instruments. 33 MLR 435.

LIABILITY OF PARTIES

PRESENTMENT FOR PAYMENT

335.27 PRESENTMENT, WHEN NECESSARY

Where plaintiff's money was paid to defendant because of a mistake of fact induced by the material misrepresentation of defendant, and plaintiff received nothing in exchange for the money so paid, in an action for money had and received, based on unjust enrichment, the good or bad faith of the defendant is not material. *Dwin-nell v Oftedahl*, 235 M 383, 51 NW(2d) 93.

Where default payment of one monthly installment of purchase price of stock and equipment of filling station which was past due at the time the chattel mortgage on stock and equipment was given as security for payment of a note evidencing the purchase price, resulted from applying on another debt owed by mortgagor part of the amount due mortgagor for services and materials furnished the mortgagee, which the parties had agreed should be used as an offset of installments of purchase price, the mortgagee waived right to foreclose the mortgage for such default without first demanding payment. *Hendrickson v Grengs*, 237 M 196, 54 NW(2d) 105.

335.271 PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND

HISTORY. GS 1866 c 23 s 4; GS 1878 c 23 s 11; GS 1894 s 2231, 2232; RL 1905 s 2741; 1913 c 272 s 71; GS 1913 s 5883; GS 1923 s 7114; MS 1927 s 7114.

335.331 WITHOUT GRACE; MATURITY

HISTORY. 1903 c 261 s 1; RL 1905 s 2746; 1913 c 272 s 85; GS 1913 s 5897; 1917 c 204 s 1; GS 1923 s 7128; MS 1927 s 7128.

335.34 PAYMENT IN DUE COURSE

In the absence of an express or implied agreement that the renewal note shall constitute absolute payment, the mere acceptance of such renewal note, even though there is a written recitation that it is received in settlement or payment of a prior note or obligation, is only conditional payment and does not effect an absolute discharge of the prior obligation. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

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NOTICE OF DISHONOR

335.35 NOTICE OF DISHONOR; HOW GIVEN

Bank's negligent dishonor of a depositor's check; presumption of substantial damages. 33 MLR 528.

DISCHARGE OF NEGOTIABLE INSTRUMENT

335.45 WHEN AND HOW DISCHARGED

Right of drawee to recover from a bona fide payee money paid under mistake. 33 MLR 305.

335.48 ALTERATION OF INSTRUMENT; EFFECT OF

In a transaction involving the sale by plaintiff to defendant of certain standing timber, where plaintiff claimed that the receipt or release he gave defendant evidencing the terms of the deal had been altered by the insertion of the word "timber" in place of the word "posts," and that he had sold defendant green posts only and not green timber, evidence was insufficient to justify a finding that there had been an alteration. *Tellock v Backholm*, 237 M 328, 54 NW(2d) 838.

BILLS OF EXCHANGE; FORM; INTERPRETATION

335.49 BILL OF EXCHANGE

The delivery by defendant to plaintiff of a check as a gift, upon which check payment was stopped before the check was presented to the bank, did not constitute valid "gift *inter vivos*" since there was no absolute disposition of the gift. *Laura Baker School v Pflaum*, 225 M 181, 30 NW(2d) 290.

ACCEPTANCES

335.51 ACCEPTANCE, HOW MADE

HISTORY. 1860 c 4 s 5; GS 1866 c 23 s 5; GS 1878 c 23 s 12; GS 1894 s 2233; RL 1905 s 2742; 1913 c 272 s 132; GS 1913 s 5944; GS 1923 s 7175; MS 1927 s 7175.

Acceptance; error in repeating terms of offer. 33 MLR 73.

Stamping the check "paid" does not constitute an acceptance for the purpose of rendering a stop-payment order ineffectual. 36 MLR 159.

Plaintiff who before majority became holder of a trade acceptance, complete and regular on its face, and who took the acceptance in good faith and for value, without notice of any imperfection in the instrument or defect in the title of the drawer, was holder in due course within the provisions of Laws 1945, Chapter 335, and was entitled to recover the face amount therefor from the acceptor, notwithstanding the drawers non-delivery of the merchandise in payment for which the acceptance was made. *Werger v Fredk. Lee Co.*, 175 F(2d) 851.

The drawer of a check is entitled to have a stop order honored if he gives such order before the check is accepted, certified, or paid. Both acceptance and certification must be in writing and signed by the drawee, and drawee's action in perforating a check with the word "Paid" and with its transit number does not satisfy this requirement. Payment of a check does not occur until the drawee has either paid the check in cash or has given something in lieu of cash which has been accepted unconditionally by the payee or his agent. Where the deposit contract between drawer and drawee provided that stop orders be in writing and that the liability of the drawee

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be limited to the exercise of its customary diligence to prevent payment, drawee nevertheless waived its right to receive a written stop order when it did not insist upon a written order but instead declined to honor the order on the sole ground that it was too late. It is held that the drawee, in failing to take any action to prevent payment of the check after the stop order was given, had not exercised either its customary diligence or ordinary diligence. *Bohlig v First National Bank in Wadena*, 233 M 523, 48 NW(2d) 446.

PROMISSORY NOTES, CHECKS

335.73 CHECK IS BILL OF EXCHANGE

Validity of provision in stopping payment order limiting liability for payment. 34 MLR 4.

Delivery by defendant to plaintiff of a check as a gift upon which payment was stopped before it was presented to the bank, does not constitute a valid gift *inter vivos* since there was no absolute disposition of the gift which the defendant intended to give the plaintiff. Delivery of the check is not delivery of money but is delivery of an order. *Laura Baker School v Pflaum*, 225 M 181, 30 NW(2d) 290.

335.74 WITHIN WHAT TIME A CHECK MUST BE PRESENTED

In mailing checks to a person with the same name as the intended payee, the federal government is not negligent; nor is it precluded from recovering by its failure to promptly notify the collecting bank of the forgery. 37 MLR 201.

335.743 CHECK NOT ASSIGNMENT OF FUNDS

Liability of bank for paying a stopped check. 33 MLR 179.

Delivery by defendant to plaintiff of a check as a gift upon which payment was stopped before it was presented to the bank, does not constitute a valid gift *inter vivos* since there was no absolute disposition of the gift which the defendant intended to give the plaintiff. Delivery of the check is not delivery of money but is delivery of an order. *Laura Baker School v Pflaum*, 225 M 181, 30 NW(2d) 290.

335.76 Unnecessary.

POLICE REGULATIONS

CHAPTER 340

INTOXICATING LIQUORS, BEER

340.01 NON-INTOXICATING BEVERAGES; SALE; LICENSE

HISTORY. 1911 c 131 s 1; GS 1913 s 3189; 1933 c 116 s 1; 1945 c 589 s 1; 1949 c 700 s 1.

The business of selling intoxicating liquor at retail for use as a beverage is peculiarly subject not only to national and state but to local regulation. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

A license to sell non-intoxicating malt liquor is in the nature of a privilege and, as such, subjects the licensee to the possibility of reasonable regulations, including restrictions on the use of the premises on which the sale is licensed. *Cleveland v Rice County*, M, 56 NW(2d) 641.