1968

Negotiable Instruments

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Repository Citation

Defense of illegality

1. Jones executes a negotiable note payable to Smith for a gambling debt. Before maturity, C becomes the holder of the note in due course, and when it is due, he sues both Jones and Smith. What defenses can Jones and Smith make?

VU/11-14 makes gambling contracts "utterly void". The U.C.C. 3-305 expressly provides that a holder in due course takes free from all defenses except ":(2)(b) such illegality "renders the obligation a nullity." Hence the defense that the note was given for a gambling debt is a real defense which Jones can make even against a holder in due course. (Note. Some question may be raised as to the above conclusion in Virginia because of 116 Va. 834 in which it was held that a bank that had lent money to maker of a note who, unknown to the bank, had borrowed it for the purpose of gambling, was entitled to a judgment against the maker). Smith, however, is liable under U.C.C. 3-417(2)(d) because of a breach of an implied warranty to C that no defense of any party is good against him.

Order of liability of endorsers

2. I hold the note of A, endorsed by B, C, and D. I desire to sue. In what order are the endorsers liable, and how many may be sued?

As between themselves endorsers are liable in the direct order of signing unless there was some agreement between them to a different effect. Such an agreement may be shown in spite of the parol evidence rule since their endorsements do not purport to set forth the contract as between themselves. As regards holders, it is immaterial what the arrangement was as between the endorsers. At common law the holder could only proceed against one endorser at a time unless there was a joint endorsement. But by VU/6-122 all prior parties may be joined in one action and a joint judgment given.

Holder in due course

3. Chas. Moses is indebted to the Front Royal National Bank in the sum of $500.00 as evidenced by the joint negotiable note of himself and wife. At the time of procuring the loan he likewise delivers to the bank, as collateral security a note of Wm. Brown, payable to Moses, for the sum of $300.00, and payable six months after date. Three days later, Brown, not knowing that the note has been pledged to the bank, pays to Moses the sum of $200 on this note. Later Moses and his wife both become insolvent and the bank institutes suit on Brown's note for $300, which it held as collateral security. Brown claims the credit of $200 above referred to. Will his claim be upheld?

No. The bank is a holder in due course. Most defenses and all equities of ownership are cut off by a negotiation to a holder in due course. Brown could have protected himself by insisting that all payments made by him be indorsed on the note. A taking for a pre-existing debt or as collateral for such a debt is value. Note: To be a holder in due course (U.C.C. 3-302) one must be a holder who takes for value, in good faith, and without notice that it is overdue or has been dishonored or of any defense or claim to it on the part of any person.

Elements - Negotiable Instrument

4. The maker of a negotiable note stipulates on its face that in the event of default in the payment thereof he will pay 10% attorney's fees for collection. What is the present doctrine in Virginia as to this stipulation?

Such a stipulation does not destroy negotiability. U.C.C. 3-106(1)(e). If the ten per cent attorney's fee is reasonable under the circumstances, that sum will be due if it is necessary to resort to an attorney to collect, but attorneys' fees are subject to court control as an incident of attorneys being regarded as officers of the court. Note: Learn the following from U.C.C. 3-101: (1) Any writing to be a negotiable instrument within this Article must (a) be signed by the maker or drawer; and (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and (c) be payable on demand or at a definite time; and (d) be payable to order or to bearer.

And by U.C.C. 3-102(1)(b) an order must identify the person who is to pay with reasonable certainty.
5. A solicits from B a loan of $1,000. B agrees to lend him the money upon a note endorsed by C and D. In the presence of B, C endorsed the note with the express proviso that both D and E shall also endorse it. A secures the endorsement of D, but not that of E, and then delivers the note to B. The note is not paid. Can B recover from C on his endorsement and reason?

No. B knew that as between the parties C was not to be liable until the condition precedent of E's signing had taken place. An oral condition precedent can be shown as between the parties (despite the parol evidence rule) not for the purpose of varying C's engagement but to show that there is no such engagement.

Umbrella Doctrine

6. A purchases in ordinary course a negotiable note from B, who has no knowledge of any equities between the original parties. A, however, has such knowledge at the time of such purchase. Can he or not enforce the note clear of such equities?

He can under the "umbrella doctrine". One who traces his title through a holder in due course has all the rights of a holder in due course. Hence A's knowledge of a defense is immaterial. This does not make the maker any worse off, while any other rule might seriously impair a holder in due course's privilege of further negotiating the instrument. This doctrine is subject to the exception that one cannot improve his position by reacquiring the instrument after it has gone through the hands of a holder in due course.

7. When, if at all, does a check operate as an assignment of the funds to the credit of the drawer?

Under U.C.C.3-409 a check or draft is not in and of itself an assignment. There is some authority to the effect that a certification of a check amounts to an assignment but the U.C.C.3-411 dealing with certification of a check is silent on this point. There are decisions to the effect that a check is an assignment, (1) when it is for the exact amount due the drawer when he closes his account, (2) when the bank has received a sum of money to cover a specified check, and, (3) when the drawer borrows money on the faith of a particular deposit made known to his creditor.

Note(1): The U.C.C. (3-417 and 3-418) adopts the rule of Price v. Neal both as to payment and acceptance and certification. Hence if F forges D's name as drawer of a check payable to the order of F, and if F cashes the check at the P Store, and the drawee bank honors the check and fails to return the item within the time allowed if presented through a clearing house the loss is on the drawer's account. It cannot charge D's account because D did not authorize or ratify the forgery. It cannot recover back the payment made to the P Store because the P Store acted in good faith and only warranted that it had no knowledge that D's signature was forged.

Note(2). This is to be contrasted with the rule about forged indorsements of order paper. In such a case the holder who collects warrants that he has good title which, of course, he does not have if he must trace his title through a forgery, and while the drawee bank cannot legally charge the drawer's account (because it paid to the order of forger when directed otherwise) it is entitled to recover back any sum paid on quasi-contractual principles—money paid under a mutual mistake of fact. The reason for the distinction between the recovery of money paid because of a forged drawer's signature and that of a forged indorsement is that the drawer has or can have the drawer's signature on file, but he cannot be expected to know the signatures of indorsers who may be anyone in the world.

8. When, if at all, will a holder of a check have a right of action against the bank on which it is drawn?

When the bank has accepted or certified it. The doctrine of third party beneficiaries has not been extended to include anyone who might be a holder. Thus, as a rule, only the drawer would have an action against the bank for wrongful refusal to honor the drawer's checks. Also when there is something in addition to the check sufficient to make it operate as an assignment.
9. What is the effect as to drawer and endorsers when the holder of the check procures it to be certified or accepted by the bank on which it is drawn?

10. What is the effect as to the drawer of a check, when the drawer on his own account procures the check to be certified or accepted by the bank on which it is drawn, and then delivers it to the payee?

If a check is certified after delivery, on presentation by the holder, the bank becomes the absolute debtor of the holder, and the drawer is released, the check being regarded as paid as between the drawer and the holder. It has been held, however, that when a check is certified before delivery, the effect is to assure the person afterward receiving it that it is genuine, and will be paid, the bank and the drawer both being bound therefor. In the first case endorsers would also be discharged for such acceptance or certification would be an election to look to the bank alone.

11. What is the cardinal difference in legal effect between negotiable and non-negotiable instruments?

In the case of non-negotiable paper assignees have no better rights than their assignors. In the case of negotiable paper holders in due course take free from all defenses except real defenses and also free from equities of ownership.

Real Defenses

12. Give two instances when a negotiable note is void in Virginia, and cannot be enforced by a holder in due course?

Real defenses include forgery, fraud in the factum (where defrauded person was not negligent), infancy, some cases of insanity, extreme duress and in Virginia, that it was given for a gaming transaction. These defenses are good against anyone, even a holder in due course. Fraud in the factum is to be distinguished from fraud in the procurement which is not a real defense. Examples-I request you to sign a paper telling you that it is my will. You sign it and it turns out to be a note. That is fraud in the factum. On the other hand if I falsely tell you that X stock is selling at $150 per share on Wall St. and thus get your note for $900 for seven shares that is fraud in the procurement and is not a real defense.

Material Alteration

13. What is the effect of material alteration of a negotiable instrument?

A holder who makes a fraudulent alteration can recover nothing. Holders in due course may recover according to the original tenor of the instrument. Non-fraudulent alterations are ineffective. U.C.C.3-407.

14. What constitutes a material alteration?

Any act which changes the legal effect of the instrument, either in its terms or in the relation of the parties to it, is a material alteration. Thus a change of date on a note is a material alteration but the change of the figures $100 to $400 without changing the written words "one hundred dollars" would not be a material alteration for in case of conflict the words govern so the note is still for $100.

15. What constitutes a holder in due course of negotiable paper?

U.C.C.3-302 defines a holder in due course is a holder who takes the instrument for value and in good faith, and without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

Stop Payment

17. A drawer a check for $500 in favor of B on the National Exchange Bank of Roanoke. B endorses and transfers the check, for value and without notice of any infirmity in the check, to C. Subsequently A notifies the bank to stop payment because the check was obtained by fraud by B. Is the bank right in refusing payment to C?

Yes. The bank must follow the drawer's directions. A check may be stopped by the drawer at any time before paid. C has no privity with the bank. C's rights are against A and not against the bank, or against B as an endorser.
18. John Smith, an attorney-at-law, sold land belonging to his client, and the purchaser executed his two negotiable notes for the purchase price payable to "John Smith, Attorney," which notes were endorsed by him in like manner, in style before maturity to Samuel Smiles in payment of a debt due by Smith to him. When the notes fell due they were paid to Smiles. Upon discovering this, Smith's client sued Smiles to recover the amount paid him by the purchaser of the property. Is he entitled to recover in the suit?

Yes. Smiles was not a holder in due course as he could not have taken in good faith when the instrument contained the words "John Smith, Attorney." The word "attorney" put him on guard to find the agent's authority to pay his private debts with fiduciary paper.

**Demand Note**

19. When is a negotiable note payable on demand due, and within what time must payment be demanded in order to fix the liability of the endorser? A executed his two negotiable notes to B, one based upon an usurious and the other upon a gambling consideration both before maturity pass into the hands of an innocent holder for value. Can A make defense to the notes or either of them?

(a) A demand note is due on its date, or, if no date is stated, on the date of issue. Note that a demand in the case of an ordinary demand note is not a condition precedent to its becoming due, and the statute of limitations starts running at once.

(b) By U.C.C.3-503(1)(e) presentment for payment to hold indorsers of demand paper must be made within a reasonable time after such party became liable thereon. In the case of an ordinary check 7 days is presumed to be a reasonable time in the case of indorsers. To be a holder in due course of demand paper one must acquire it within a reasonable time after its issue. U.C.C.3-304(3)(a) The gambling note is made utterly void by statute. A has no defense to the usury note as against a holder in due course since there is no statute in Virginia making usurious contracts utterly void. Illegality is ordinarily the agent's only a personal defense.

**Taking up Notes**

20. What is the effect of the transaction where one who is primarily bound for the payment of a note takes it up? What if the note be taken up by a stranger who is neither a party to the paper nor in any way bound for its payment? What title does the purchaser of past due negotiable paper from an agent for collection acquire?

(a) Secondary parties are discharged unless the instrument was for their accommodation. (b) U.C.C.3-603 provides that payment may be made with the consent of the holder by any person including a stranger to the instrument and that surrender of the instrument to the payor gives him the status of a transferee. (c) Only the title the agent for the collection had. If he holds the note as an agent, so does the purchaser, and this for two reasons, first after maturity, and second knowledge of the agency.

**Disclaimer of Liability**

21. A note for $500 in payment of a subscription to stock in a land company is made payable to "A, Secretary and Treasurer." The company discounts the note to B, and A, in order to effect the transfer endorsee in the terms above used. The note is protested for non-payment; the company is insolvent, and B endeavors to hold A individually as endorser. What as to A's liability?

A is liable unless he indorsed in such a way as to disclaim liability as "A, Secretary and Treasurer without recourse". Comment 1 to U.C.C. 3-114 reads in part, "An indorser may disclaim his liability on the contract of indorsement, but only if the indorsement so specifies. Section 44(f)of the N.I.L.R. permitting a representative to indorse in such terms as to exclude personal liability is omitted as unnecessary and included in the broader right to disclaim any liability."

1. Is the following instrument negotiable? "X, pay me $500 out of the money due me for building your barn."?

The fact that a bill of exchange (draft) is not dated nor the place of execution mentioned, does not affect its status as a negotiable instrument. The above instrument is not negotiable(1) because not payable to order or bearer(2) because the order is conditional on the existence of a particular fund. Note however if the promise or order is absolute, a direction to charge to a particular account or fund...
NEGOTIABLE INSTRUMENTS Revised June 1965.

2. If X's otherwise negotiable note negotiable if payable (1) When he is 25 years of age. (2) At his death. (3) When the wheat on certain land is harvested. (4) When demanded. (5) Ten years from date, but if any of this series of notes be not paid when due, then all to become due and payable?

(1) No, as X may never reach 25 years of age. (2) No. U.C.C. 3-109(2) reverses the former law and provides that an instrument which by its terms is otherwise payable only on an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. (3) No, as it may never be harvested. (4) Yes. This is an ordinary demand note. (5) Yes. By U.C.C. 3-109(e) an instrument is payable at a definite time even though it is subject to any kind of acceleration.

1. (1) When is an instrument payable to bearer? (2) A check read, "Pay X, or bearer $500-Y". Y sent this check through the mails to X. Z stole it from the mails and forged X's name thereto and negotiated it to A, a holder in due course. The drawee bank charged Y's account. Was it within its rights in the U.C.C. 3-407(2)?

(1) By U.C.C. 3-111 an instrument is payable to bearer when it is payable to bearer or to the order of bearer, or to a specified person or bearer, or cash or to the order of cash, or any other indication which does not purport to designate a specific payee. And by U.C.C. 3-204(2) an instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed. Note: Bearer paper of all kinds can be effectively specially indorsed.

(2) Yes. This is bearer paper. A does not have to trace a title through the forgery and hence may strike it out if the holder had order paper the bank would have had to make good as they would not have paid to the order of X.

Incomplete Instrument

4. P gave his servant, A, a check filled in every way except as to amount, and directed him to get certain articles at the X store and fill in the amount of the check for those articles. A got the articles for himself instead and filled in a much greater amount in the presence of the storekeeper, and absconded. (1) Must P make good to the storekeeper? (2) If the storekeeper had passed the check to a holder in due course would P be liable on the check?

The answer is "Yes" in each case provided the storekeeper acted in good faith. The U.C.C. treats this case as an alteration and under U.C.C. 3-107(3) when an incomplete instrument has been completed a holder in due course may enforce it as completed. And by U.C.C. 3-302(2) a payee can be a holder in due course.

5. X made out his note to Y for $500 but had not yet given it to him. The parties disagreed. While X left the room to see what his wife wanted Y walked off with the note, and negotiated same to H, a holder in due course. (1) Is X liable thereon? (2) Suppose the note had been incomplete and Y had filled it in before he negotiated it to H. X is liable in each case to H.

Lack of delivery of a completed instrument is only a personal defense. The U.C.C. (3-115 and 3-107 combined) makes X liable even in the case of a stolen incomplete instrument which bears X's genuine signature. "And when an incomplete instrument is completed (a holder in due course) may enforce it as completed."

Defense of Lack of Consideration — Defense in General

6. Plaintiff, the payee, in his motion for judgment on a note against the maker did not allege that the note was given for value. Defendant demurred. Result? Demurrer over-ruled. Consideration is presumed. Lack of consideration must be set up as a defense. Note that lack of consideration is not a defense as against a holder in due course. However, if Maker is sued by an alleged holder in due course and if Maker can establish a personal defense, then the alleged holder in due course has the burden of proving that he is in all respects a holder in due course or traces his title through a holder in due course.
7. X lent Y $500, for which Y gave X his negotiable note. X endorsed this note to Z after maturity and without any consideration. Y refused to pay and Z sued X and Y both of whom set up the fact of no consideration. Result?

X is not liable to Z as he has received no consideration for his indorsement as Z knew. Y is liable to Z as he has no defense. True Z is not a holder in due course but that is immaterial unless there is some sort of defense. Z has at least all the rights of a gratuitous assignee. X meant to make a gift to Z and not to Y and it makes no difference to Y whether he pays X or a party whom X has ordered him to pay.

8. Classify the following indorsements(1) Pay to Y, X. (2) X. (3) Pay Y if he passes the bar exam, X. (4) Pay Y only, X. (5) X, without recourse on me. (6) Pay Y, for collection only, X. (7) Pay Y as trustee for B, X.

(1) is a special indorsement, (2) blank, (3), (4), (6), and (7) are restrictive, and (5) is qualified.

9. In question 8(3) would the drawee bank be safe in paying if it knew he had failed to pass the bar exam indicated?

No. Under U.C.C.#3-205 the former conditional indorsement has been changed to one form of restrictive indorsement. And under U.C.C.#3-603(1)(b) a payment made in a manner not consistent with a restrictive indorsement does not discharge the payor.

10. What is the effect of a restrictive indorsement?

Section 3-206. Effect of Restrictive Indorsement.

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms(sub-paragraphs (a) and (c) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.

(h) The first taking under an indorsement for the benefit of the indorser or another person(subparagraph (d) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty(subsection (2) of Section 3-302).

11. (1) X forged Y's name as drawer of a check and negotiated it to Z, a holder in due course, who indorsed to A as follows:"Pay A, without recourse on me, Z." Is Z liable to A? (2) X, an infant, wrote the following check "Pay to the order of cash $50.00, X." He then delivered the check to Y who passed it to Z without endorsement. Z indorsed to A. X stopped payment. A neglected to give Z notice of dishonor. (a) If A sues Z what result? (b) If A sues Y what result?

(1) Yes. Under U.C.C.#3-417(2)(b) any party who transfers an instrument for a consideration warrants that all signatures are genuine or authorized. (2)(a) Z is liable on his warranty that no defense of any party is good as against him unless he indorsed without recourse in which case the warranty is(as to this point) that he has no knowledge of any defense. No proceedings on dishonor are necessary to hold a party on warranties. (b) Y is not liable. A transferrer without indorsement is liable only to his immediate transferee. Had Y indorsed he would have been liable on his warranties to any subsequent holder who took in good faith.
12. Suppose X forgets to indorse when he passes the instrument on to Y for value, what are Y's rights?

Section 3-201. Transfer: Right to Indorsement.
(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course. (2) ** * (3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

13. What should be remembered about the liability of indorsers as indorsers?

Section 3-414. Contract of Indorser; Order of Liability.
(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so. (2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

14. X asked Y if he, Y, would cash his $200 check. Y telephoned the drawee bank, and upon their promise to honor X's check, Y told X that he would take it. After Y called the bank several other checks were presented to the bank drawn by X which exhausted his account. The bank refused to honor X's check. Y sued the bank. Result?

Judgment for the bank. It cannot be held as an acceptor unless acceptance was in writing and on the draft (check).

15. Drawer wrote several checks and died before the checks cleared. Would the Drawee Bank be within its rights in honoring these checks if its officers knew about Drawer's death?

U.C.C. #4-405 reads in part: Death or Incompetence of Customer.* ** *(1) Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it. (2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

16. An otherwise negotiable instrument was not payable to order or bearer. Is it governed by Article 3 of the U.C.C.?

Yes. U.C.C. #3-805 provides that such an instrument is negotiable for all purposes except that there can be no holder in due course. All other provisions of Article 3 are applicable. Hence indorsers are entitled to notice of dishonor, consideration is presumed, and procedural provisions apply.
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One S turned over $1500 to her son-in-law, M, to lend on real estate. M lent the money to C who gave a note for $1500 payable to bearer, and C executed a deed of trust to M. The note showed that it was secured by deed of trust. M later pledged this note for a debt of his own to the X Bank. S claims that she is entitled to the note. The bank claims that it is a holder in due course of bearer paper. Discuss.

1. Statements on notes payable to bearer that they were secured by deed of trust made unto named party as trustee should have aroused suspicion of bank acquiring notes from such party of possible equities of other parties, although statements were not sufficient in themselves to charge bank with bad faith in acquiring note. 2. Section 56 of the N.I.L. (Code 1919 #5618) makes a distinction between constructive notice as applied in other branches of the law, particularly equity, and as applied under the law merchant. In the former, "The care which a person of ordinary honesty and prudence would have exercised is the test." Under the law merchant the question is "not ought the holder to have suspected, but did he suspect the existence of the equity." 3. At the time the bank acquired this note it knew that M was unable to meet his financial obligations. He was $1500 in arrears for office rent due the bank. The bank knew M was the son-in-law of S, that he habitually lent money for her and others on Norfolk real estate and that he made himself trustee in the deeds of trust securing these loans. Yet the bank made no inquiry of any sort from M or anyone else. A jury could find from these facts not mere negligence, but bad faith, and if they did, as they did in this case, it was error for the trial court to set aside the verdict of the jury.

Note: There would be the same result under the U.C.C. The test of good faith in Virginia is "the empty head and white heart rule". But if a purchaser has knowledge of such facts that his action in taking the instrument amounts to bad faith he has not taken in good faith. The Virginia version of U.C.C. #3-301 adds subsection (7) which keeps the law on this point in this State as it was under the N.I.L.

NEGOTIABLE INSTRUMENTS

A $250 note was payable in instalments of $10 each starting April 1, 1932, the instalments being due every 2 months. The note provided that "In the event that two of said payments shall be due and unpaid at the same time, and then, if not paid within 30 days of the due date of the last of the said two overdue payments, the balance in full of this note immediately become due and payable without notice."

(1) Does the statute of limitations run from the due date of the last installment, or, from accelerated due date, in case of default? (2) Is the note negotiable?

(1) While there are cases which hold that these contracts of acceleration are for the benefit of the creditors and merely confer upon them the right at their option to treat the debt as due, still when the acceleration provision is absolute in form, as here, the whole note becomes due according to the acceleration provision automatically and the statute of limitations starts running from accelerated date. U.C.C. #3-109(1)(d) in accord.

(2) U.C.C. #3-109(1)(d) permits any kind of acceleration, and provides that acceleration provisions do not destroy the requirement that the instrument must be payable on demand or at a definite time.

NEGOTIABLE INSTRUMENTS—Sales

J bought a car on the installment plan evidenced by one note of $428 payable in 12 monthly installments, and in case of default all to become due at once (Note: Not at the option of the holder but automatically).

He failed to make the two first payments. Suit was brought therefor and judgment recovered and paid. He refused to make any further payments and Finance Co. took the car.

Held: Guilty of conversion. Suit for two installments when all installments were due barred a recovery for the remainder. "No one should be vexed twice for one and the same thing." Different result if acceleration had been at the option of holder instead of automatically.
Q.1. Is oral notice of dishonor sufficient?
2. Is notice of dishonor sufficient if given to an executor before his qualification?
3. If the holder of a note is also executor of a party secondarily liable must he give notice of dishonor?
4. If the holder-executor as above gives a binding extension of time to the Maker for 4 years is the deceased's estate released?

A.1. Oral notice is notice. The U.C.C. does not require a written notice.
2. Yes, as it would be presumed that he still had this notice in mind after he qualified.
3. No. One need not give notice to himself.
4. An executor has no authority at common law to consent to an extension. Under Va. Code renewals in such cases cannot exceed 2 years. Hence the deceased's estate is not liable having been discharged by a binding extension of time for 2 years without a reservation of rights against parties secondarily liable.

Dr. E applied by B, an insurance agent, for life insurance in the amount of $10,000. Dr. E gave B his note for $600 for the first year's premium if Dr. E's application was accepted. Otherwise the note was to be returned. The application was rejected. B, instead of returning the note, wrote on it, "Payable at the C Bank". B then took the note to the C Bank which discounted it for B the note being payable to B's order. The C Bank acted in good faith and knew nothing of the addition. The C Bank sued Dr. E who defended on the ground of material alteration and conditional delivery.

Discuss.

Material alteration exists for if one adds a place of payment where no place is specified the contract has been changed. But a holder in due course may collect according to the original tenor of the instrument. Likewise a conditional delivery is not a good defense as against a holder in due course as it is a personal defense rather than a real one.

Parol evidence as to a negotiable instrument will not be received, unless there is something on face of instrument, or in manner of signature, to create an ambiguity as to liability of party signing.

If a bank is holder in due course, a receiver of the bank who traces his title through the bank has the same rights as a holder in due course.

A note made by X, Y, and Z was indorsed by D as an accommodation indorser. When it matured, the holder, H, assigned the instrument without recourse to X, Y, and Z who then re-indorsed and re-delivered the note to H as collateral security for a renewal note. D died in the meantime. H as personal representative, did not re-indorse the original note nor did she indorse the renewal note. Is she liable on the original note assuming that she consented to the execution of the renewal note?

Held: Not liable. To assign without recourse to the makers is to divest one of the note. Hence the makers became the owners of the note in their own right. U.C.C. #3-601(3)(a) reads, "The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument reacquires the instrument in his own right."

X made a note which contained the sentence that both maker and endorser consented to an extension of payment beyond the date of maturity. D was an accommodation indorser. He died, and the note was renewed several times after his death. Is D's personal representative liable?

Held: No. Such extensions cannot be continued indefinitely after the death of the endorser, for, if it could, the executrix might never be able to settle the estate of her decedent. (p. 81)
Note: An endorser of a note has the rights of a surety, and any change in the contract, made without his consent, even though it be to his advantage discharges the surety (p. 82). Of course, there must be consideration for the change in the contract, or there is no change. A renewal note constitutes a change as maker was under no duty to give a new note and the payee was under no duty to take a new note. Note: U.C.C. § 3-118(f) reads in part, "Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period."

NEGOTIABLE INSTRUMENTS
A note for $2,000 was secured by deed of trust. The note did not contain any acceleration clause but the deed of trust provided for acceleration at the option of the note holder if taxes were not paid or interest was not kept paid up. The maker of the note failed to keep up interest payments and taxes. Does this accelerate the note if the holder so desires?

Held: Yes, by express statutory provision (V § 55-59). Thus the rule in Virginia is that the note as well as the deed of trust is accelerated under the above circumstances.

NEGOTIABLE INSTRUMENTS
A bearer negotiable bond was indorsed in blank by X. The next indorsement was as follows, "Pay to Y the interest on this bond for Y's life if Y supports her mother, and at Y's death to be the property of my brothers and sisters. Z." Y contends that she can strike out the above indorsement and hold the paper in her own right since the bond is payable to bearer. Is this contention sound?

Held: Section 40 of the NIL (Where an instrument payable to bearer is indorsed specially it may nevertheless be further negotiated by delivery...) and section 49 (The holder may at any time strike out any indorsement which is not necessary to his title) have no application to the instant case as the indorsement here is conditional and is necessary to Y's limited title. Note: Under U.C.C. § 3-204(1) the rule laid down in Section 40 of the NIL as is changed, and bearer paper may be indorsed specially, in which case the last indorsement controls.

NEGOTIABLE INSTRUMENTS--Consideration, Statute of Limitations
In 1919 H gave X a negotiable demand note for $1,000. This note was indorsed by W who was H's wife. H died in 1940. X did not present the note to H's estate as the statute of limitations had run since run. X persuaded W to give him a note, and the sued W on the new note. W is now 85 years of age and deaf. Is she liable on the new note?

Held: Yes. While she had been discharged long ago by failure to present the note at its maturity, and by the running of the statute of limitations these defenses do not discharge the obligations but merely bar the remedy. W waived the bar when she gave the new note, and if there was consideration for her original liability on the original note that same consideration suffices for the new note.

NEGOTIABLE INSTRUMENTS
X was the holder of a note for $3,000 payable to bearer and secured by deed of trust. X was a lawyer and held this note in trust for an estate, and was bonded. X secured a divorce for Mrs. G and learned from her that she had $2,000 in the bank. X told her that she ought to take out the $2,000 and invest it in the note he had, and she could have a 2/3rd interest therein. He said he couldn't let her have the note as the estate still had a one-third interest. So Mrs. G gave him the money and he gave her a receipt for same indicating it was a loan on the note. A month later X sold the note to D who was a holder in due course. X died a few weeks later totally insolvent. What are the rights of the parties?

Held: (1) Mrs. G was not a holder in due course as she knew this note was not X's own private property and that he had no authority to borrow on it. Same result under U.C.C. § 3-304(2).

(2) D was a holder in due course and is entitled to collect same from the maker.

(3) The Surety Bonding Co. is not liable to Mrs. G as this was outside the scope of the trust, and a matter purely personal between X and his client.
NEGOTIABLE INSTRUMENTS

"In Va. a stipulation in a note for compensation to attorneys for collection fees incurred, if payment of the note is not made at maturity, is a valid, binding, and enforceable contract. If the attorney's fees are incurred under the conditions set out in the notes, they are a part of the same obligation as the principal and interest."

Hence a deed of trust securing the payment of the note equally secures the payment of the attorney's fees.

NEGOTIABLE INSTRUMENTS

D borrowed money from P and gave his note therefor payable one year from date. Year after year a renewal note for 1 year was given. On the occasion of the last renewal D wrote "10 year". P did not notice that there was a naught after the 1 at the time D died. P then innocently erased the naught and attempted to collect the note from D's personal representative. He refused to pay it because of the alteration claiming that the note was discharged by section 124 and 125 of the NIL(V#6-477 and 6-478).

Held: The note was discharged, but since P acted in good faith to correct a supposed error P may collect on the original obligation for which the discharged altered note was given. Otherwise an innocent act would result in an unjust forfeiture. Of course if P had acted fraudulently there could be no recovery either on the note or on the obligation for which the note was given.

Note: Under U.C.C.#3-607(2)(a) and (b) an alteration which is not both fraudulent and material discharges no one, and the obligation may be enforced according to its original tenor. In the principal case above under U.C.C. law, unless the note could be reformed in equity, there would be no duty to pay it until it became due after the ten years were up. Under U.C.C.#3-802(1)(b) any action on the underlying obligation is suspended until the note given for it is due.

NEGOTIABLE INSTRUMENTS

D as maker gave his brother B his notes for $21,000. Later B died. Before his death B told D and four other persons that D need never pay the notes as he wanted D to have the money. After B's death B's personal representative found the notes in B's valuable papers and demanded payment. Is D under a duty to pay them?

Held: Yes. Under the NIL(V#6-475) "a renunciation must be in writing unless the instrument is delivered up to the person primarily liable thereon." Since the renunciation was not in writing and since the notes were not delivered up the obligations have not been discharged and it is the duty of B's personal representative to collect them.

Note: The same result would be reached under U.C.C.#3-605(1)(b) which reads, "The holder of an instrument may even without consideration discharge any party by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged."

NEGOTIABLE INSTRUMENTS

Land was conveyed to T as trustee to secure a note payable to the order of L. Upon default T foreclosed and sold the land to G for G's $4500 note payable to bearer, which note was secured by a deed of trust on the land sold to G at the foreclosure sale. Instead of giving this note to L, the trustee T, long afterwards sold it to C who gave value. After maturity C sold the note to B. Contest between L and B as to which one has priority in the proceeds of a sale of the land, which sale was acquired in by both L and B. The $4500 note matured in 1932. When C was asked when she bought the note she said she could not remember exactly but that it was some time between 1930 and 1937. B claims that he traces his title to the $4500 note through a holder in due course, C, and hence that he has priority over L. Is this contention sound?

Held: No. When L showed that T negotiated the note in breach of trust he showed a defect in C's title. The law then casts the burden on B to show that C was a holder in due course. One of the elements of being a holder in due course is a purchase before maturity. C's testimony that she acquired the note somewhere between 1930 and 1937 when the note was due in 1932 does not sustain this burden.
NEGOTIABLE INSTRUMENTS Renunciation of Wills 195 Va.92
F sold a farm to his Nephew, N, and his mother for $12,000 taking their note there for. The note bore 6% interest and was payable in 15 annual installments of $800 each beginning on June 10, 1948. F decided to make a gift to N and his mother of anything that might be due on the note when F died so they all went to lawyer L's office. L advised him to write on the note, "At death this note is to be cancelled and not to be collected" and to sign and date it. So they went to F's home and N wrote the statement above on the note and F signed it and gave the note to N's mother. F died a few months later. Section 122 of the N.I.L. (Va6-475) reads in part, "The holder may expressly renounce his rights against any party to the instrument before, at, or after maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after maturity of the instrument discharges the instrument." F's personal representative wishes to hold N for the balance of the note. Can he do so?

Held: No. It is immaterial that F's act may have been testamentary in nature. Section 122 applies, and under the first sentence of #122 there has been a valid renunciation. The power to renounce the whole immediately includes the power to renounce a part at a later time, as at the death of the renouncer. Nor does a renunciation need consideration, nor does it have to satisfy the requirements of a gift inter vivos, or causa mortis or the statute of wills.

Note: We would in this case reach the same result under U.C.C. #3-605(1)(b) (set forth supra at the end of the second case before this) for the renunciation was in writing and the note with the renunciation was delivered up to one of the makers for both of them thereby doubly satisfying the U.C.C. requirements for renunciation.

NEGOTIABLE INSTRUMENTS 197 Va.589.
A dispute arose between P and D as to the amount due P by D. D sent P a check for $6,000 marked "Payment in full of accounts both notes and open." P notified D that he would not accept the check as payment in full. P later had the check certified. The N.I.L. (Va6-541) states that certification is the equivalent of acceptance. D contended that when P had the check certified he accepted it as per conditions annexed thereon.

Held: D is wrong. The term "acceptance" as used in the N.I.L. is a technical term applying only to the liability of the drawee bank. Whether or not P has accepted the check in full payment depends on the intention of both P and D. Unless each intended such a result the original debt is not discharged by an accord and satisfaction. Note: Same result for same reason. See U.C.C. #3-411.

NEGOTIABLE INSTRUMENTS 198 Va.692.
M was the maker of a note for $800 and P the holder. After maturity P sued M who relied on the defense of payment. According to M's testimony he wrote a check for the amount due and gave it to his good friend, B, who was P's bookkeeper (now deceased). B did not have the note but is alleged to have promised to get it later and send it to M, but he never did. M was unable to produce the cancelled check as he alleged it was destroyed when his house caught on fire. There was no evidence that M had tried to get the note from P. B did not give M a receipt, and had no authority express or implied to receive payment of notes due P.

Held: For P. The burden of proving payment, which is an affirmative defense, is on the one claiming that he has paid. Even if M paid B he has not shown that B had any authority to take the payment or that B accounted to P. B was M's agent to pay P, and not P's agent to receive the payment and the risk that B might not account to P was on M. The fact that B was never entrusted with the note is strong evidence that he had no authority to collect it.
NEGOTIABLE INSTRUMENTS--Unauthorized Indorsement

A, acting as an agent for P, negotiated a $6,000 loan from the S Bank. P signed a bond in that amount secured by a deed of trust on Blackacre and A secured a check from the S Bank for the $6,000 payable to the order of P. Then A, thinking erroneously, but in good faith, that he had authority to indorse the check wrote on the back thereof, "Deposit to the credit of P", and turned the check over to L, a building and loan association. This indorsement is the equivalent of "Deposit to my credit." (Signed) P. I then indorsed it, "For deposit only, L" and deposited the check in the C Bank. The C Bank indorsed it, "Pay any Bank or Trust Company. All prior indorsements guaranteed." The C Bank collected the check from the S Bank. P sued both banks for $6,000.

Held: For P. While the indorsement of A was made in good faith, and hence he was not guilty of a felony, nevertheless it was made without authority and is hence an unauthorized signature. (Since this check belonged to P and was payable to her order the Banks have converted P's check). Under Va.87-375 the unauthorized indorsement "Deposit to the credit of P" was wholly inoperative "and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority". Since P had not ratified A's act and was not estopped, she is entitled to judgment. (If the S Bank is forced to pay any portion of this judgment it can recover from the C Bank under its guaranty of all prior indorsements)

Note: We would have substantially the same result under the U.C.C. The applicable provisions of the U.C.C. are 3-401(1), "An unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it" 3-419(1)(c), "An instrument is converted when it is paid on a forged indorsement", and thus the S Bank would be a converter; Under 3-419(2) the C Bank would not be liable as a converter to P if it acted reasonably and in good faith except as to proceeds of the check still in its hands; and under 3-417 the C Bank warranted to the S Bank that the C Bank had good title to the instrument, so, if P collects from the S Bank for conversion the S Bank can recover from the C Bank for breach of its warranty that it had good title to the check.

NEGOTIABLE INSTRUMENTS--Agency

In order to finance the construction of a building J gave N, a note broker, his negotiable note payable to the order of N for $20,000 secured by a deed of trust on J's land. N then borrowed $20,000 from Bank on N's note to Bank which was secured by an indorsement of J's note to N to Bank along with the deed of trust securing same. N then paid out the net proceeds of his note to Bank to contractors who were working for J. In due course J mailed his check to N in full payment of his note. J thought N still had his note and that he would return the note to him and release the deed of trust. Instead of doing this N used the money for other purposes than repaying Bank. It was common practice for makers of notes to pay the original payee to enable them to take up pledged notes in this type of transaction. N is now insolvent and Bank seeks to foreclose the deed of trust to collect the note pledged to it as security for N's note to Bank. J claims that because of the custom which was acquiesced in by Bank that Bank is estopped to claim that N was not its agent to receive payment of J's note to N which N had pledged to Bank.

Held: Bank can foreclose. J sent money to N because he thought N was holder of note--not because Bank held N out as an agent. J trusted N to take care of the note for him. Hence N was J's agent to pay off the note and N's default is J's default. It was no concern of Bank whether J paid the note in person, by mail, or through an agent. Since J did not know of the transaction between N and Bank he was not misled by anything Bank did and hence there is no estoppel.
S sold a new car to M, and M gave S his negotiable note for the balance due. This note was secured by a conditional sales contract which fact was properly noted on the certificate of title given to M. Later S negotiated the note to P indorsing it in blank. After M had made a few payments on the note, he stopped making any more payments at all. P then had M give him a new certificate of title. It was stated that this sale was for cash though no cash passed, and it showed a clear title in P. When P was unable to collect anything more from M or S he procured a confession of judgment against M and S for the balance still due on the note. S then unsuccessfully moved to have this judgment set aside as per V applicable.

Held: Reversed as to S who, as an unqualified indorser, was a surety for M. When S negotiated the note to P the security for it followed the note as a matter of law. When P released the conditional sales contract security by taking title to the car in his own name, he released S, the surety. A creditor who holds security for a debt on which there is a surety cannot destroy the security and still hold the surety. Here the security interest was destroyed by merger in the legal title as shown by the certificate of title. (If there had been no release of the conditional sales contract, S, on paying the note would have been subrogated to P's rights to the security of the car. P has interfered with this right to S's damage. Hence S is discharged). Besides, P is not entitled to a double recovery: (1) the car, and (2) payment of the note. The explanation in parenthesis is mine.

Note: The result would be the same under U.C.C. § 3-606(1)(b) which reads, "The holder discharges any party to the instrument to the extent that without such party's consent the holder unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse."