CHAPTER 116.*

NEGOTIABLE INSTRUMENTS.

FORM AND INTERPRETATION, CONSIDERATION, NEGOTIATION, HOLDER, PARTIES, PRESENTMENT.

116.01 Definitions. In chapters 116, 117 and 118 unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay same. All other parties are "secondarily" liable.

*For table of section numbers of Negotiable Instrument Law see Appendix.

In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the passage hereof.

In any case not provided for in this chapter the rules of the law merchant shall govern. [*1939 c. 513 s. 33*]

Note: Where a person partially discharges an obligation owed by another, and the balance of the obligation has not been discharged, the former is not entitled to subrogation to the position of the obligee. Strelitz v. First Wisconsin Nat. Bank, 220 W 443, 264 NW 649.

Both under common law of suretyship and provision of negotiable instrument law declaring person absolutely liable to pay instrument primarily liable, an accommodation maker of a note, as surety, is entitled by subrogation to whatever security payee has for enforcement of claim against principal maker. Estate of Onstad, 224 W 332, 271 NW 652.

116.02 Negotiable instruments; form. An instrument to be negotiable must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer.

(2) Must contain an unconditional promise or order to pay a sum certain in money.

(3) Must be payable on demand or at a fixed or determinable future time.

(4) Must be payable to order or to bearer.

(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Note: Clause in bonds, otherwise negotiable, incorporating trust deed provision that bonds may, before their fixed maturities, be declared due and payable at once, did not render bonds nonnegotiable. Pollard v. Tobin, 210 W 659, 247 NW 453.

When a note contains a reference to some extrinsic contract in such a way as to make the note subject thereto, as distinguished from a reference importing merely that the extrinsic contract was the origin of the transaction or constitutes the consideration for the note, the negotiability of the note is destroyed; and such rule applies in determining whether the note comes within 270.69, providing for cognovit judgments upon a "note." Shawano F. Corp. v. Julius, 214 W 637, 254 NW 355.

The construction of the uniform negotiable instruments act by the supreme court of the state is binding upon the United States courts, and because of that rule the decision in the Pollard-Tobin case was followed. Marine Bank v. Kalt-Zimmers Co., 293 U. S. 357.

116.03 Words to be printed on face of note. All promissory notes and other evidences of indebtedness, taken or given for any lightning rod or interest therein as the case may be, shall have written or printed thereon in red ink the words: "The consideration for this note is the sale of a lightning rod or interest therein, as the case may be."

116.04 Penalty for taking note without statement required. Any person who shall sell a lightning rod or any interest in a lightning rod, who shall take a promissory note or other evidence of indebtedness for the whole or any part of the consideration thereof, and who shall fail to state the consideration for said note as provided by section 116.03, or in words of similar import, shall be liable to a penalty equal to the face of the note so taken.

116.05 Certain notes nonnegotiable; innocent holder of. All notes or other evidences of indebtedness taken as the whole or a part of the consideration for any lightning rod or interest therein, which shall express upon their face the consideration for which they are taken, as required by section 116.03, shall be nonnegotiable, and be subject to all the defenses in the hands of an innocent holder that the same would have if not transferred.

116.06 Sum certain. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:

(1) With interest; or

(2) By stated instalments; or

(3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

(4) With exchange, whether at a fixed rate or at the current rate; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

116.07 Unconditional promise. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

116.08 Determinable future time. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

(1) At a fixed period after date or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

(4) At a fixed period after date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided.

116.09 Negotiable character not affected. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal or authorize the waiver of exemptions from execution.

116.10 Validity and negotiability not affected, when. The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

116.11 Payable on demand, when. An instrument is payable on demand:

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed. Where an instrument is issued, accepted, or indorsed, when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Note: A note which designated no time for payment was payable on demand and was due when the loan was made. Accola v. Giese, 223 W 431; 271 NW 19.

116.12 Payable to order, when. The instrument is payable to order where it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of:

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being. Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

116.13 Payable to bearer, when. The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last indorsement is an indorsement in blank.

116.14 Effect of memoranda on instrument. The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument, and parol evidence is admissable to show the circumstances under which they were made.

116.15 Date prima facie evidence. Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

116.16 Date. The instrument is not invalid for the reason that it is antedated or postdated, provided that this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

116.17 Undated paper. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at

a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

116.18 Uncompleted instruments. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it prior to negotiation by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as an authority to fill it up as such for any amount. In order, however, that any such instrument when complete may be enforced against any person who became a party thereto prior to completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Note: A note executed by accommodation parties only and delivered was not incomplete if the omission of the accommodated party's signature was unintentional. Klundby v. Hodgen, 202 W 438, 232 NW 858.

116.19 Incomplete instruments completed without authority. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before negotiation.

116.20 Contracts on negotiable paper, when incomplete. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Note: A note payable to the bank, delivered to the president, who was not the managing officer, for his accommodation, not for a special purpose but for the purpose of giving effect thereto and of transferring property therein to the bank, and was complete and irrevocable. Schwenker v. Teasdale, 206 W 275, 239 NW 434.

116.21 Construction of ambiguities. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon;

(8) Where several writings are executed at or about the same time, as parts of the same transaction, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof.

116.22 Trade or assumed names. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name.

116.23 Signature by agent. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

116.24 Agent not liable. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Note: Mere addition of words, describing signer of instrument as agent or representative, after his signature, without disclosing principal, does not relieve signer of liability as principal, in absence of reformation. Reformation of instrument cannot be adjudged in action to which person on whom liability is to be fastened is not party. Kegel v. McCormack, 225 W 19, 272 NW 650.

116.25 Signature by "procuration." A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

116.26 Indorsement by corporation or infant. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

116.27 Forgery. Where a signature is forged or made without the authority of the person whose signature it purports to be, it is 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.

116.28 Bank; forged check; limitation. No bank shall be liable to any depositor for the payment by it of a forged or raised check unless action therefor shall be brought against such bank within one year after the return to the depositor by such bank of the check so forged or raised as a voucher.

Note: This section is not applicable where indorser forged name of fictitious payee to check. 24 Atty. Gen. 594.

116.29 Presumptions. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Note: The proof necessary to establish want of consideration in a note is at least as great as that required to establish a mistake, i. e., clear, satisfactory and convincing proof. Estate of Flierl, 225 W 493, 274 NW 422.

Affection is not a valuable consideration. Therefore it is insufficient to support a promise to pay. Estate of Smith, 226 W 556, 277 NW 141.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and one who asserts want of consideration has the burden to establish such fact by clear and satisfactory proof. Estate of Hatten, 233 W 199, 288 NW 278.

There can be no recovery on a note the only consideration for which is love and affection. A negotiable note is presumptively given for a valuable consideration. Estate of Schoenkerman, 236 W 311, 294 NW 810.

116.30 Value, defined. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Note: Forbearance of surviving husband of payee, who was payee's sole heir, to qualify as administrator of payee's estate, and to bring action on original note and granting of extension to maker, held sufficient consideration for renewal note given surviving husband for balance remaining due on original note. Onsrud v. Paulsen, 219 W 1, 261 NW 541.

The maker's preexisting liability on account of the original note was a sufficient consideration to support his renewal note. Banking Comm. v. Townsend, 243 W 329, 10 NW (2d) 110.

116.31 Value presumed. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

116.32 When holder has lien. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

116.33 Absence of consideration matter of defense. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Note: Where the consideration for the note was to be the maker's release from prison, there was a complete failure of consideration, constituting a defense as against any person not a holder in due course. Estate of Peterson, 242 W 448, 8 NW (2d) 266.

116.34 Accommodation party defined. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person

is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

Note: A gratuitous accommodation party is liable to the holder of a note for value, notwithstanding the holder knew him to be only an accommodation party. Schwenker v. Teasdale, 206 W 275, 239 NW 434.

Section 117.38 (4a), relating to the discharge of persons secondarily liable on an instrument, is inapplicable to an accommodation maker of a note, he being primarily liable. Bosworth v. Greiling, 213 W 443, 250 NW 856.

116.35 Instrument, when negotiated. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Note: A negotiable instrument payable to a named payee or order can be negotiated only by indorsement, and where it is transferred by the payee without indorsement, the transferee is not a holder in due course. Drzewiecki v. Stempowski, 232 W 447, 287 NW 747.

116.36 Indorsement, what is. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

116.37 Indorsement is entire. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

116.38 Special or blank indorsement. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

116.39 What special or blank indorsement. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

116.40 Conversion of blank into special indorsement. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

116.41 Restrictive indorsement. An indorsement is restrictive which either:

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

116.42 Right conferred by. A restrictive indorsement confers upon the indorsee the right:

(1) To receive payment of the instrument;

(2) To bring any action thereon that the indorser could bring;

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

116.43 Qualified indorsement. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

116.44 Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

116.45 Indorsements of instruments payable to bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

116.46 Instruments payable to two or more persons. Where an instrument is payable to the order of two or more payees or joint indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

116.47 When drawn to fiscal officer. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima

facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

116.48 Misspelled names. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

116.49 Negative personal liability. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

116.50 Prima facie evidence of negotiation. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

116.51 Presumption. Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

116.52 Duration of negotiability. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

116.53 Erasing indorsements. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him are thereby relieved from liability on the instrument.

116.54 Transfer without indorsement; subsequent indorsement. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Note: Assignment of negotiable note without indorsement destroyed its negotiability, so that payment thereon by maker to original payee's agent, without notice of assignment of note and mortgage securing it, operated as payment against assignee. Rosecky v. Tomaszewski, 225 W 438, 274 NW 259.

116.55 Reissue by prior party. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

116.56 Holder may sue. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

116.57 Holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value.

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

(5) That he took it in the usual course of business.

Note: An instrument is "negotiated" when it is transferred in a manner constituting the transferee the holder thereof, and the payee may be the "holder in due course." Farmers L. Ins. Ass'n v. Houghton, 207 W 357, 241 NW 352.

As respects question whether bank took bonds in good faith so as to constitute it holder in due course, that bonds for which they were substituted as collateral were considered worth their face value, was prima facie evidence of good faith. Pollard v. Tobin, 211 W 405, 247 NW 453.

A note, executed on a printed form, wherein the printed rate of interest "seven" was stricken and the figure "1" was written immediately following and the figure "6" was written above the stricken "seven," was not fair and regular on its face because of the conflicting rates of interest apparently stipulated for and the resulting uncertainty as to the amount payable, so that the payee of the note was not a "holder in due course," and hence a transferee, who took the note after it was overdue, was subject to the defense of alteration in an action to recover from the maker. Balliet v. Wollersheim, 241 W 536, 6 NW (2d) 824.

116.58 When not a holder in due course. When an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

116.59 Notice of infirmity in the instrument. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid therefor the full amount agreed to be paid he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

116.60 Defective title. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature

thereto, by fraud, duress, or force or fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud and the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care.

Note: Evidence that at time plaintiff signed note and mortgage which he believed to be an application for a mortgage loan he was old and feeble, could neither read nor write, and could not, except as told, understand nature of instruments, justified finding that plaintiff had met burden of showing that he did not know the nature of the instruments he signed and could not have obtained such knowledge by ordinary care so as to be entitled to have note and mortgage declared void as against bank to whom they were delivered as substitute for another mortgage; note and mortgage were also void as to other signer. Klosterhuber v. Wisconsin S. Bank, 218 W 191, 260 NW 644.

116.61 Actual knowledge of infirmity necessary to notice. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

116.62 Rights of holder in due course; exception. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon except as provided in cases where the title of the person negotiating such instrument is void under the provision of section 116.60 of this act.

116.63 Holder, other than in due course. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud, duress or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to such holder.

Note: Payment of an assigned but unindorsed negotiable note to the payee without notice of the assignment constitutes payment as against the assignee, since a negotiable instrument in the hands of one not a holder in due course is subject to the same defenses as if it were nonnegotiable. Falk v. Czapiewski, 214 W 624, 254 NW 111.

The rule that a chose in action in the hands of an assignee is subject to all defenses that existed against the assignor at the time of the assignment is subject to the qualification that a payer may estop himself by his representations, or by conduct equivalent to a representation, from asserting a defense against an assignee that he had against the assignor. Michalak v. Nowinski, 220 W 1, 264 NW 498.

116.64 Burden of proof as to title. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

116.65 Maker. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

116.66 Drawer. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

116.67 Acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and,

(2) The existence of the payee and his then capacity to indorse.

Note: Drawee bank which stamped check "paid," charged it to drawer's account, and issued draft for proceeds, accepted check and was liable where it stopped payment of draft upon subsequent cancellation of check by drawer. First Nat. Bank v. Wisconsin Nat. Bank, 210 W 533, 246 NW 593.

116.68 Indorser. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Note: An indorsement on a note, by which the indorser guaranteed the payment of the note at maturity or at any time thereafter, with interest until paid, constituted an absolute promise to pay the note and was a guaranty of payment, not a mere guaranty of collection. In an action on the indorser's guaranty of payment of the note, tender of

the note and mortgage prior to the commencement of the action was not necessary, the action being at law for the recovery of damages, not in equity for rescission. Kasten v. G. A. Zuehlke M. L. Co., 213 W 555, 252 NW 162.

Where the courts of other jurisdictions are not in accord as to the meaning of a section of the uniform negotiable instruments law, the Wisconsin supreme court is free to follow those courts which it thinks have construed the section properly. Signers on the back of a note after a statement "Protest waived; payment guaranteed" are indorsers, not guarantors. M. J. Wallrich L. & L. Co. v. Ebenreiter, 216 W 140, 256 NW 773.

For distinction between a "guarantor" and "indorser" see note to section 330.47, citing Zuehlke v. Engel, 229 W 386, 282 NW 579.

116.69 Liability of indorser in blank. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he sign for the accommodation of the payee, he is liable to all parties subsequent to the payee.

116.70 Warranty. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (3) of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

Note: A holder of an overdue note who transferred it by indorsement without recourse had no indorser's liability except the warranties imposed on a qualified indorser. Hlubocky v. Schramel, 228 W 141, 279 NW 637.

116.71 Warranty of indorser without qualification. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivisions (1), (2) and (3) of the next preceding section; and,

(2) That the instrument is at the time of his indorsement valid and subsisting.

And in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it is dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

116.72 Indorsement of instrument negotiable by delivery. When a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

116.73 Indorsers liable in order of indorsement. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

116.74 Negotiable without indorsement by broker. When a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 116.70, unless he discloses the name of his principal, and the fact that he is acting only as an agent.

116.75 Presentment when necessary. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

116.76 Presentment, time to make. Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

116.77 Sufficient presentment. Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

116.78 Presentment at proper place. Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last-known place of business or residence.

116.79 Exhibition of instrument. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

116.80 During banking hours. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

116.81 In case of death. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

116.82 Partners. Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

116.83 Joint debtors. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

116.84 In order to charge drawer. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

116.85 In order to charge indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

116.86 Delay, when excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

116.87 When dispensed with. Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this chapter cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment express or implied.

116.88 Negotiable notes defined. A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Note: A promissory note drawn to the order of the corporation-maker, delivered to the plaintiff for value without indorsement by the corporation-maker, was not a negotiable note and could not be enforced as such, but it was a nonnegotiable instrument, on which the plaintiff could bring an action, not only against the corporation-maker, but also against the president of the corporation, who had indorsed the note before its delivery to the plaintiff for value. Kiel Wooden Ware Co. v. Laun, 233 W 559, 290 NW 214.