

CHAPTER 118.

NEGOTIABLE INSTRUMENTS.

BILLS, CHECKS, ACCEPTANCE, PROTEST, PAYMENT.

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118.01 What is bill of exchange. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or bearer.

118.02 Not an assignment of funds. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.

118.03 Address of bill. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative.

118.04 Inland and foreign bill. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

118.05 Where drawer and drawee are same person. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

118.06 Referee in case of need. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

118.07 Acceptance of bill. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

118.08 Acceptance in writing. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and if such request is refused, may treat the bill as dishonored.

118.09 Written acceptance on paper other than bill. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

118.10 Promise in writing. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

118.11 Time allowed for acceptance. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

118.12 Refusal or failure to return. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. Mere retention of the bill is not acceptance.

118.13 Acceptance of incomplete, overdue or dishonored bill. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

118.14 General or qualified acceptance. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

118.15 General acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

118.16 Qualified acceptance. An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

Note: The following acceptance of a draft at the office of undersigned." Livingston was unconditional: "November 10, 1927, ac- County T. Co. v. Green Bay C. Co., 204 W cepted. Payable February 8, 1928. Payable 256, 234 NW 346.

118.17 Refusal of qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

118.18 Where made. Presentment for acceptance must be made:

- (1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (2) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

118.19 Failure to present or negotiate. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged.

118.20 When and where to be made. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

- (1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

118.21 Presentment of bill. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 116.77 and 117.03.

118.22 Delay, when excusable. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

118.23 Presentment, when excused. Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment cannot be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

118.24 When dishonored. A bill is dishonored by nonacceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by chapters 116 to 118 is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted. [1945 c. 33]

118.25 Recourse, when lost. When a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

118.26 When recourse accrues. When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

118.27 Foreign bills; by notary. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. Every notary public, when any bill of exchange or promissory note shall be by him protested for nonacceptance or nonpayment, shall give notice thereof in writing to the drawer, maker and each indorser of such bill of exchange or promissory note; he shall also thereupon make a certificate under his hand and official seal, setting forth the presentment, demand, refusal and protest thereof for nonacceptance or nonpayment, the contents of the notice given, and the time and manner of service thereof, specifying the post office and reputed place of residence of each person notified by mail; he shall also thereupon make and keep a record of such certificate and of the description of the instrument protested; and such certificate or such record, or a certified copy thereof, shall be presumptive evidence of the facts therein stated. The want of such certificate or record, or both, shall not invalidate any such protest or notice, but the same may be proved by any other competent evidence.

118.28 Specifications of protest. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

118.29 How made. Protest may be made by:

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

118.30 When made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

118.31 Where made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

118.32 For nonpayment. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

118.33 When acceptor a bankrupt. When the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

118.34 When dispensed with. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when 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, the bill must be noted or protested with reasonable diligence.

118.35 Lost bill. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

118.36 Acceptance supra protest, for honor. Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

118.37 To be in writing. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

118.38 For drawer, when. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

118.39 Liability of acceptor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

118.40 Engagement of acceptor for honor. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

118.41 Bill payable after sight. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

118.42 Acceptance of dishonored bill. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

118.43 Presentment to acceptor, how made. Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place, than the place where it was protested, then it must be forwarded within the time specified in section 117.22.

118.44 Section 116.86 applies. The provisions of section 116.86 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

118.45 Dishonor by acceptor for honor. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

118.46 Payment supra protest. Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [1933 c. 159 s. 23]

118.47 Notarial act of honor, when necessary. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

118.48 Foundation of notarial act. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

118.49 Different parties. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

118.50 Bill paid for honor. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

118.51 Holder's refusal, supra protest. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

118.52 Payer for honor. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

118.53 Bills in sets constitute one bill. Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

118.54 Where parts are negotiated. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

118.55 Indorsement to different parties. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

118.56 Acceptance on any part. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

118.57 Liability of acceptor in paying part. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

118.58 When whole bill is discharged. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

118.59 Rate of damages within state. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly protested for nonacceptance or nonpayment the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

118.60 Rate of damages without state. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay said bill with legal interest according to its tenor and five per cent damages, together with costs and charges of protest.

118.61 Check. A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

118.62 Presentation of check. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Note: What constitutes a reasonable time for presentation of a check for payment is a question of fact; a delay of two or three days in presentment does not, as a matter of law, constitute an unreasonable time, in the absence of a showing of the circumstances of the parties to whom the check was issued or indorsed. *Coolidge v. Rueth*, 209 W 458, 245 NW 186.

The payee of a check drawn on a bank at Kenosha did not present it for payment within a reasonable time, where the payee in Chicago sent the check to its depository bank at Minneapolis, which forwarded it to

the federal reserve bank at Chicago, which forwarded it to the drawee bank, where it arrived one day after that bank had closed. *Mars, Inc. v. Chubriilo*, 216 W 313, 257 NW 157.

Section 220.15 (bank collection code) does not relieve drawee of check from making presentation within reasonable time. County is discharged from liability to extent of loss caused by delay when county orders or checks are not presented to county depository within reasonable time. 19 Atty. Gen. 259.

118.63 Certified check. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

118.64 Discharge of liability of drawer and indorsers. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

118.65 Check not assignment of funds. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

Note: A check is not an assignment of funds in the sense that the drawing and delivery of it entitles the payee instantaneously to the fund covered by it; the payee is not entitled to the fund until the check is presented for payment and paid, and the death of the drawer revokes the check. *Dixon S. Co. v. Moen*, 208 W 389, 243 NW 327.

Under the negotiable instruments law a check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the drawee bank, and the bank is not liable to the payee or other holder unless and until the bank accepts or certifies the check, and under 118.07 the acceptance must be in writing and signed by the drawee. The payment of a check on a forged indorsement does not amount to an accept-

ance so as to make the drawee bank liable to the payee, and in the absence of such acceptance a drawee bank which unwittingly pays a check to which the payee's signature is forged is not liable to the payee. *Miller v. Northern Bank*, 239 W 12, 300 NW 758.

Under the negotiable instruments act, the giving of a check does not operate pro tanto as an assignment of the fund as between the drawer and the payee, and when a drawer issues a check on a bank in which he has funds and the check is not presented by the payee for payment before revocation, the only remedy that the payee of the check has is against the drawer of the check. *Guardianship of Thornton*, 243 W 397, 10 NW (2d) 193.

118.66, 118.67 [*Repealed by 1933 c. 159 s. 24, 25*]

118.66 Drawee, time to dishonor. The drawee bank named in a check presented to it by mail or through a clearing house association, or through a settlement with another bank or banks, or for deposit in an account in the drawee's bank is allowed until the end of the next business day following the day of presentation to decide whether or not it will pay the check. Any check dishonored on said next business day may be protested or notice of dishonor or notice of protest may be given or deposited in the post office on the said next business day. [*1943 c. 117; 1945 c. 281*]