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PART 4

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§ 3–401. Signature

(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

1963, c. 362, § 1.

§ 3–402. Signature in ambiguous capacity

Unless the instrument clearly indicates that a signature is made in some other capacity, it is an indorsement.

1963, c. 362, § 1.

§ 3–403. Signature by authorized representative

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in

other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) Is personally obligated, if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) Except as otherwise established between the immediate parties, is personally obligated, if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established, the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

1963, c. 362, § 1.

§ 3–404. Unauthorized signatures

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed, unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

1963, c. 362, § 1.

§ 3–405. Impostors; signature in name of payee

(1) An indorsement by any person in the name of a named payee is effective, if

(a) An impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) A person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) An agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

1963, c. 362, § 1.

§ 3–406. Negligence contributing to alteration or unauthorized signature

Any person, who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature, is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

1963, c. 362, § 1.

§ 3–407. Alteration

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) The number or relations of the parties; or

(b) An incomplete instrument, by completing it otherwise than as authorized; or

(c) The writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed, unless that party assents or is precluded from asserting the defense;

(b) No other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

1963, c. 362, § 1.

§ 3–408. Consideration

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 3–305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

1963, c. 362, § 1.

§ 3–409. Draft not an assignment

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

1963, c. 362, § 1.

§ 3–410. Definition and operation of acceptance

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance, the holder may complete it by supplying a date in good faith.

1963, c. 362, § 1.

§ 3–411. Certification of a check

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed, a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so, the drawer is discharged.

1963, c. 362, § 1.

§ 3–412. Acceptance varying draft

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored, in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft, each drawer and indorser who does not affirmatively assent is discharged.

1963, c. 362, § 1.

§ 3–413. Contract of maker, drawer and acceptor

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 3–115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

1963, c. 362, § 1.

§ 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 endorse which is presumed to be the order in which their signatures appear on the instrument.

1963, c. 362, § 1.

§ 3–415. Contract of accommodation party

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due, the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation, oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument, has a right of recourse on the instrument against such party.

1963, c. 362, § 1.

§ 3–416. Contract of guarantor

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that, if the instrument is not paid when due, he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that, if the instrument is not paid when due, he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of 2 or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used, presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

1963, c. 362, § 1.

§ 3–417. Warranties on presentment and transfer

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) To a maker with respect to the maker's own signature; or

(ii) To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) To an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) The instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) To the maker of a note; or

(ii) To the drawer of a draft whether or not the drawer is also the drawee; or

(iii) To the acceptor of a draft with respect to an alteration made prior to the acceptance, if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) To the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and, if the transfer is by indorsement, to any subsequent holder who takes the instrument in good faith that

(a) He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) All signatures are genuine or authorized; and

(c) The instrument has not been materially altered; and

(d) No defense of any party is good against him; and

(e) He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2), paragraph (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

1963, c. 362, § 1.

§ 3–418. Finality of payment or acceptance

Except for recovery of bank payments as provided in the article on bank deposits and collections (Article 4) and except for liability for breach of warranty on presentment under section 3–417, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

1963, c. 362, § 1.

§ 3–419. Conversion of instrument; innocent representative

(1) An instrument is converted when

(a) A drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) Any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) It is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this Title concerning restrictive indorsements, a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 3–205 and 3–206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

1963, c. 362, § 1.