

## CHAPTER 116.

## NEGOTIABLE INSTRUMENTS.

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

|         |  |        |   |
|---------|--|--------|---|
| 116.01  | Definitions.   | 116.45 | Indorsements of instruments payable to bearer.        |
| 116.02  | Negotiable instruments; form.                          | 116.46 | Instruments payable to two or more persons.           |
| 116.03  | Words to be printed on face of note.                   | 116.47 | When drawn to fiscal officer.                         |
| 116.04  | Penalty for taking note without statement required.    | 116.48 | Misspelled names.                                     |
| 116.05  | Certain notes nonnegotiable; innocent holder of.       | 116.49 | Negative personal liability.                          |
| 116.06  | Sum certain.   | 116.50 | Prima facie evidence of negotiation.                  |
| 116.07  | Unconditional promise.                                 | 116.51 | Presumption.  |
| 116.08  | Determinable future time.                              | 116.52 | Duration of negotiability.                            |
| 116.09  | Negotiable character not affected.                     | 116.53 | Erasing indorsements.                                 |
| 116.10  | Validity and negotiability not affected, when.         | 116.54 | Transfer without indorsement; subsequent indorsement. |
| 116.11  | Payable on demand, when.                               | 116.55 | Reissue by prior party.                               |
| 116.12  | Payable to order, when.                                | 116.56 | Holder may sue.                                       |
| 116.13  | Payable to bearer, when.                               | 116.57 | Holder in due course.                                 |
| 116.14  | Effect of memoranda on instrument.                     | 116.58 | When not a holder in due course.                      |
| 116.15  | Date prima facie evidence.                             | 116.59 | Notice of infirmity in the instrument.                |
| 116.16  | Date.  | 116.60 | Defective title.                                      |
| 116.17  | Undated paper.   | 116.61 | Actual knowledge of infirmity necessary to notice.    |
| 116.18  | Uncompleted instruments.                               | 116.62 | Rights of holder in due course; exception.            |
| 116.19  | Incomplete instruments completed without authority.    | 116.63 | Holder, other than in due course.                     |
| 116.20  | Contracts on negotiable paper, when incomplete.        | 116.64 | Burden of proof as to title.                          |
| 116.21  | Construction of ambiguities.                           | 116.65 | Maker.  |
| 116.22  | Trade or assumed names.                                | 116.66 | Drawer.   |
| 116.23  | Signature by agent.                                    | 116.67 | Acceptor.   |
| 116.24  | Agent not liable.                                      | 116.68 | Indorser.   |
| 116.25  | Signature by "procurator."                             | 116.69 | Liability of indorser in blank.                       |
| 116.26  | Indorsement by corporation or infant.                  | 116.70 | Warranty.   |
| 116.27  | Forgery.   | 116.71 | Warranty of indorser without qualification.           |
| 116.28  | Bank; forged check; limitation.                        | 116.72 | Indorsement of instrument negotiable by delivery.     |
| 116.285 | Bank; forged or unauthorized indorsements; limitation. | 116.73 | Indorsers liable in order of indorsement.             |
| 116.29  | Presumptions.  | 116.74 | Negotiable without indorsement by broker.             |
| 116.30  | Value, defined.  | 116.75 | Presentment when necessary.                           |
| 116.31  | Value presumed.  | 116.76 | Presentment, time to make.                            |
| 116.32  | When holder has lien.                                  | 116.77 | Sufficient presentment.                               |
| 116.33  | Absence of consideration matter of defense.            | 116.78 | Presentment at proper place.                          |
| 116.34  | Accommodation party defined.                           | 116.79 | Exhibition of instrument.                             |
| 116.35  | Instrument, when negotiated.                           | 116.80 | During banking hours.                                 |
| 116.36  | Indorsement, what is.                                  | 116.81 | In case of death.                                     |
| 116.37  | Indorsement is entire.                                 | 116.82 | Partners.   |
| 116.38  | Special or blank indorsement.                          | 116.83 | Joint debtors.  |
| 116.39  | What special or blank indorsement.                     | 116.84 | In order to charge drawer.                            |
| 116.40  | Conversion of blank into special indorsement.          | 116.85 | In order to charge indorser.                          |
| 116.41  | Restrictive indorsement.                               | 116.86 | Delay, when excused.                                  |
| 116.42  | Right conferred by.                                    | 116.87 | When dispensed with.                                  |
| 116.43  | Qualified indorsement.                                 | 116.88 | Negotiable notes defined.                             |
| 116.44  | Conditional indorsement.                               |        |   |

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

- (1) "Acceptance" means an acceptance completed by delivery or notification.
- (2) "Action" includes counterclaim and set-off.
- (3) "Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.
- (4) "Bearer" means the person in possession of a bill or note which is payable to bearer.
- (5) "Bill" means bill of exchange, and "note" means negotiable promissory note.
- (6) "Delivery" means transfer of possession, actual or constructive from one person to another.
- (7) "Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.
- (8) "Indorsement" means an indorsement completed by delivery.
- (9) "Instrument" means negotiable instrument.
- (10) "Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.
- (11) "Person" includes a body of persons, whether incorporated or not.
- (12) "Value" means valuable consideration.
- (13) "Written" includes printed, and "writing" includes print.

(14) 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.

(15) 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. Where the day, or the last day, for the doing of any act herein required or permitted to be done falls on Saturday, the act may be done on said Saturday, if not a holiday, or on the next succeeding secular or business day. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to May 16, 1899.

(16) In any case not provided for in this chapter the rules of the law merchant shall govern.

**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.

**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 ne-

gotiable 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.

**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 nonexistent or living person not intended to have any interest in it, and such fact was known to the person making it so payable, or known to his employe or other agent who supplies the name of such payee; 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 admissible 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.

**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.

**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.

**116.25 Signature by "procurator."** A signature by "procurator" 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.

**116.285 Bank; forged or unauthorized indorsements; limitation.** No bank shall be liable to a depositor for the payment by it of a check bearing a forged or unauthorized indorsement unless, within 2 years after the return to the depositor of the voucher for such payment, such depositor shall notify the bank that the check so paid bore such forged or unauthorized indorsement.

**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.

A person by signing and delivering a renewal note reciting "value received" acknowledged in writing that it was given for consideration. *Hessman v. O'Brien*, 258 W 243, 45 NW (2d) 730.

**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.

The discharge of a pre-existing indebtedness constitutes good and sufficient consideration for a new promissory note. *Hessman v. O'Brien*, 258 W 243, 45 NW (2d) 730.

**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.

Where a note was executed by a borrower of money and by an accommodation maker 3 weeks after the money had been loaned to the borrower to meet his individual obligations, the accommodation maker could set up lack of consideration as to him as a defense against the original payee and his estate, and the trial court, under evidence that the loan was made without any inducement from the accommodation maker or any promise on his part to secure the note, could find that there was no consideration for his becoming an accommodation maker at the later date, warranting the disallowance of a claim, filed against his estate by the administratrix of the original payee, on the ground that the debt was exclusively an obligation of the borrower of the money. *Estate of Vogel*, 259 W 73, 47 NW (2d) 333.

**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.

See note to 116.33, citing *Estate of Vogel*, 259 W 73, 47 NW (2d) 333.  
The relation between the accommodation maker of a note and the party accommodated is that of suretyship, and the accommodation maker recovers not on the note but on the implied promise of the party accommodated to indemnify him. *Halbach v. Halbach*, 259 W 329, 48 NW (2d) 617.

**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.

**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.

**116.55 Reissue by prior party.** Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of chapters 116 to 118, 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.

**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 chapters 116 to 118 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.

**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.

Assuming that the payee had obtained the note from the defendant maker by fraud in the sale of the payee's business, the fact that the plaintiff assignee acquired the note from the payee, his grandson, without investigating except to ascertain that the note had been taken in the sale of the payee's business, and had not inquired as to the financial standing and integrity of the defendant maker, together with certain other allegedly suspicious circumstances, all analyzed in the opinion, would not warrant a finding that the plaintiff assignee had actual knowledge of the infirmity or defect in the title of the payee, or knowledge of such facts that his action in taking the note amounted to bad faith. *Rosenberg v. Gilson*, 259 W 434, 49 NW (2d) 417.

In the absence of any proof that the plaintiff assignee participated in the trans-

action by which the payee obtained the note from the defendant maker by fraud in the sale of the payee's business, or had notice of any fraudulent act on the part of the payee, or had knowledge even of the fact that a sale was being negotiated prior to the time when he acquired the note from the payee, bad faith on the part of the plaintiff assignee could not be inferred from the fact that the payee was the plaintiff's grandson. Notice of facts tending to put a cautious buyer on inquiry will not defeat the title of a holder of negotiable paper, if in truth there was neither actual knowledge of an infirmity in the instrument or defect in the title of the person negotiating the same nor conscious joinder in a fraud. *Rosenberg v. Gilson*, 259 W 434, 49 NW (2d) 417.

**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 avail-

able 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.

**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.

**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.

In an action by the assignee of a note and chattel mortgage to recover on the note only, wherein it was found that the payee, the plaintiff assignee's grandson, had obtained the note from the defendant maker by fraud in the sale of the payee's business, undisputed proof by the plaintiff assignee of his possession of the note, that it was properly indorsed by him, and that he acquired title before maturity, for value, and without evidence of infirmity or defect of the title in the payee, met the burden imposed by this section on a holder when it is shown that the title of the person who negotiated the instrument was defective, unless rebutting evidence permitted the inference that the plaintiff assignee acted in bad faith in failing to make further inquiry. *Rosenberg v. Gilson*, 259 W 434, 49 NW (2d) 417.

**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 negating 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.

**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.

**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.

**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 chapters 116 to 118 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.