

- (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)(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.

§ 28:3—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 the preceding section, 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.

§ 28:3—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 subtitle concerning restrictive indorsements a representative, including a depository or collecting bank, who has a 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 depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 28:3—205 and 28:3—206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

PART 5—PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

§ 28:3—501. When presentment, notice of dishonor, and protest necessary or permissible

- (1) Unless excused (section 28:3—511) presentment is necessary to charge secondary parties as follows:
 - (a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than